

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE DISTRICT OF NEW MEXICO

3           UNITED STATES OF AMERICA,

4                               Plaintiff,

5                   vs.                               NO:   CR-15-4268 JB

6           ANGEL DELEON, et al.,

7                               Defendants.

8   VOLUME 25

9           Transcript of Jury Trial before The Honorable  
10          James O. Browning, United States District Judge, Las  
11          Cruces, Dona Ana County, New Mexico, commencing on  
12          March 5, 2018.

13          For the Plaintiff: Ms. Maria Armijo, Mr. Randy  
14          Castellano, Mr. Matthew Beck

15          For the Trial 1 Defendants: Ms. Amy Jacks, Mr.  
16          Richard Jewkes, Ms. Theresa Duncan, Mr. Marc Lowry,  
17          Ms. Carey Bhalla, Mr. Bill Maynard, Mr. Ryan Villa,  
18          Ms. Justine Fox-Young.

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1 THE COURT: All right. Good morning,  
2 everyone. I appreciate everybody being here and  
3 ready to go, making themselves available to me  
4 early. I appreciate the way y'all have done that  
5 throughout the trial. You've been a great bunch to  
6 work with, and I appreciate it very much.

7 A couple of things to talk about. Ms.  
8 Duncan sent all of us an email over the weekend, and  
9 the changes look -- we're going to have to tackle  
10 typos at some point. So I thought we might as well  
11 try to do it so my third law clerk came in  
12 yesterday, made the changes, got all the copies to  
13 you, and then realized he'd given you redline copies  
14 rather than final. So he's back there scrambling to  
15 do that.

16 Does anyone having any problems with  
17 making those changes to the typos? Anything from  
18 the Government?

19 MR. BECKER: No, Your Honor.

20 THE COURT: Any of the defendants?

21 MS. JACKS: No.

22 THE COURT: So you and I will get a copy  
23 quickly here that's not redlined.

24 Juror number 6, Carolyn M. McAdams, who is  
25 from Carrizozo, has called in this morning and said

1 her husband has heart problems and has been rushed  
2 to the hospital. She didn't ask permission not to  
3 be here. She didn't tell us she'll call back. She  
4 told us that she is not going to be here. She's an  
5 alternate. She is our first alternate after we lost  
6 Ms. May. Then alternate number 1 was Mr. Laroche,  
7 the third juror in. And if you didn't know,  
8 Ms. Wild thought he was from Las Cruces. He's not.  
9 He's from Albuquerque. So he is now our 12th juror.  
10 So we're not losing a juror by letting Ms. McAdams  
11 go, if we have any control over the situation.  
12 We're losing the first alternate.

13 Does anybody have any problem with  
14 officially striking her as the first alternate? So  
15 our second alternate will become Mr. Moore, who is  
16 down at the very end, from Hobbs. So he'll become  
17 our first alternate.

18 Ms. Armijo?

19 MS. ARMIJO: No, Your Honor, we do not  
20 object.

21 THE COURT: Any defendants have any  
22 objection? I'm not sure we have a lot of choice  
23 here. I tried to think of alternatives, but I don't  
24 think we -- she's just gone.

25 MS. DUNCAN: It doesn't sound like we have

1 much choice, Your Honor. No further objections.

2 THE COURT: Unless somebody has objection,  
3 I'm going to go ahead and officially strike Carolyn  
4 McAdams, juror number 6, from Carrizozo.

5 So now your first alternate becomes, as I  
6 indicated, Mr. Moore, number 9. Your second  
7 alternate becomes Bridget Murphy, juror number 12.  
8 Your third alternate becomes juror number 15,  
9 Brittany Courtier from Alamogordo. Your fourth  
10 alternate and your last alternate is Bridget Bush,  
11 up in the corner, from Carlsbad.

12 All right. Is there anything else we need  
13 to discuss before we bring the jury in, Mr. Maynard?

14 MR. MAYNARD: Judge, just briefly. This  
15 is part housekeeping and part on merits. I forgot  
16 to reurge a Rule 29 motion for acquittal. I'd like  
17 to do it at this time. I know it's a little out of  
18 sync with the schedule, but I'd like that for the  
19 record.

20 THE COURT: All right. Any problem with  
21 me taking these up? All right. So we'll --

22 MS. ARMIJO: No, Your Honor.

23 THE COURT: So your Rule 29 will be  
24 considered timely, and I will deny it for the  
25 reasons that I denied it after the Government's

1 case.

2 Anybody else need anything from the  
3 Government? Do you have something, Ms. Jacks?

4 MS. JACKS: Your Honor, we had filed an  
5 objection to the complete audio recordings going  
6 back -- and I don't know that the Court ruled on  
7 that.

8 THE COURT: Well, I had an opinion, and I  
9 think it got lost in everything. You will get an  
10 opinion on that. I am denying that motion. You  
11 will see that the Tenth Circuit has not followed the  
12 Ninth Circuit. It has cited it, as you pointed out  
13 in your brief, but it's also said that it's found  
14 those cases unpersuasive. There are other cases  
15 from other places. I'll try to get that out. It's  
16 off my bench, so it's somewhere with my clerks,  
17 either being read or further work on it, but it's  
18 off my desk. But I did spend time with it and  
19 looked at the cases, and I'm going to deny it.

20 MS. JACKS: Other than the objection  
21 stated in the objection, we have nothing further.

22 THE COURT: All right. Thank you, Ms.  
23 Jacks.

24 Anyone else?

25 All right. Here's what I propose to do,

1 is when we bring the jury in, I'll greet them, and  
2 then go ahead and proceed to read the instructions.  
3 Given the estimate that Ms. Wild has of 45 minutes  
4 to an hour, what I would propose to do is when I'm  
5 done reading, take a break; give the jury cautionary  
6 instructions and take a break.

7 That will allow the Government to set  
8 up -- however you want to set up your courtroom and  
9 that sort of stuff. Now, if you know how long your  
10 opening closing is going to be, then depending on  
11 how long it is, I might ask Ms. Bean if she can hang  
12 in with us to get you done before we take our next  
13 break.

14 Do you have a sense of that, as to how  
15 long your opening portion of your closing is going  
16 to be?

17 MS. ARMIJO: Mr. Castellano is doing it.  
18 But we have asked him -- and we will keep him to  
19 it -- to not be longer than an hour and 45 minutes.  
20 And Mr. Beck and I certainly will pull him in about  
21 that time.

22 THE COURT: All right. So I'm going to  
23 let y'all rein him in. I'll let y'all just do that.

24 And Ms. Bean, do you think you could hang  
25 with us an hour and 45? So we'll not take our next

1 break until hour 45. And then the Government rest  
2 on their openings -- their closings. Then I'll just  
3 work with y'all. If you want to give me a list, if  
4 you've got an order that you want. If you want to  
5 tell me kind of when you want to take the breaks. I  
6 like to give Ms. Bean a break -- since she's been  
7 working for me a number of years and may work for me  
8 a number of more years, I want to keep her healthy  
9 and happy -- about an hour and a half. I'm sure  
10 she'll work with you a little bit, so that we don't  
11 want to get things busted up too much.

12 MS. DUNCAN: Your Honor, I'm going first.

13 THE COURT: You're going first?

14 MS. DUNCAN: And I timed myself about an  
15 hour 15 to an hour and a half.

16 THE COURT: All right. Well, let's just,  
17 then, break after you, then. Okay. So we won't  
18 try -- then we'll just play it by ear after that,  
19 and see where we go. Does that work for everybody?

20 All right.

21 MS. ARMIJO: Your Honor, just for the  
22 record, we were handed most recently the Court's  
23 10th proposed jury instructions. The one earlier  
24 this morning said Court's 11th, so --

25 THE CLERK: That should be the 11th.

1 MS. ARMIJO: But the cover sheet says  
2 10th, so we're going with what we were just handed;  
3 is that correct?

4 THE COURT: Go with what's just handed.  
5 We'll hand you a new cover sheet for that. Why  
6 don't you get rid of that one that says 11th, and  
7 I'll give you one that said -- we're going to go  
8 with 10, probably should just go with 10.

9 THE CLERK: We filed 10th on Friday. This  
10 should be the 11th.

11 THE COURT: Well, but we handed out the  
12 11th.

13 THE CLERK: And I'll do new cover sheets.  
14 Give me the cover sheets back.

15 THE COURT: Shouldn't it be 12th?

16 THE CLERK: Should be 12.

17 THE COURT: Okay. So we'll give you  
18 another cover sheet here in a minute that says 12th,  
19 if you'll just replace your cover sheets.

20 Does everybody know which copy we're  
21 working from? The one we just passed out said 10th.  
22 We'll give you a new cover sheet that says 12th.  
23 The 11th that you had in your chair this morning,  
24 just forget it. Everybody clear?

25 All rise.



1 (The jury entered the courtroom.)

2 THE COURT: Good morning, ladies and  
3 gentlemen. Good to see you back on time, ready to  
4 go. I appreciate it. I know everybody was eager to  
5 get out of here on Friday. I got to go home to  
6 Albuquerque and I slept in my bed for the first time  
7 since January 28. So I didn't know what to make of  
8 that. So I don't think I've ever missed sleeping in  
9 my home for a whole month. I never slept there in  
10 February.

11 I hope you had a good weekend. Thank you  
12 for being back. My wife celebrated her birthday on  
13 Saturday, so she drove in from Dallas on Friday and  
14 I drove in, so I got to see her and spend a little  
15 time with her. So it was a nice weekend for me.

16 I appreciate y'all giving up so much of  
17 your time, your weekends and things, to be back.  
18 You've just been a great bunch to work with. I know  
19 you probably think I tell that to every jury, but  
20 y'all really have been extraordinary. And I think  
21 that the lawyers and the parties would attest to  
22 that, particularly people that hang around  
23 courthouses all the time. You've been a great bunch  
24 to work with, and we appreciate it very much.

25 All right. Ms. Standridge.

1 (The Court instructed the jury.)

2 (The following proceedings were held at  
3 the bench.)

4 THE COURT: You know that I have immense  
5 respect for all of you. It's been a blast presiding  
6 over this trial with you guys. You're  
7 professionals. This is about as good as it gets,  
8 what you're about to do. We don't get to do this  
9 very often in our profession. Not even I get to do  
10 it very often, so have fun. Okay.

11 MS. DUNCAN: Thank you, Your Honor.

12 THE COURT: Okay.

13 (The following proceedings were held in  
14 open court.)

15 THE COURT: Okay. All right, Mr.  
16 Castellano, do you have a closing argument on behalf  
17 of the Government?

18 MR. CASTELLANO: Yes, Your Honor. May it  
19 please the Court.

20 THE COURT: Mr. Castellano.

21 MR. CASTELLANO: Ladies and gentlemen of  
22 the jury, we're almost there. This is the sixth  
23 week of trial, and if you haven't been paying  
24 attention to the calendar, today is March 5. In two  
25 days we are at the four-year anniversary of the

1 death of Javier Molina, ironically enough. So it's  
2 a pretty interesting time to be making a decision  
3 about this case.

4 I do the first opening, so what I'm going  
5 to do is kind of go through the jury instructions  
6 with you. I'm going to give you the nuts and bolts  
7 decision-making process, and then cover the evidence  
8 with you as best I can.

9 I don't have a lot of time, so I'm going  
10 to move pretty quickly. If I run out of time, I'm  
11 eventually just going to give you times on some of  
12 the recordings. So in case you didn't remember,  
13 there were recordings in this case with transcripts.  
14 But for purposes of your deliberations, you will not  
15 have transcripts. You will only have the  
16 recordings. So I will do the best I can to give you  
17 a road map of where to find the information in the  
18 recordings, and I'll let you know when I get to that  
19 point. So for those of you taking notes, we can get  
20 there.

21 First let me start with the jury  
22 instructions, because this is really the road map  
23 for you. And the first thing out of the gate, and  
24 the second instruction, is that you are to make your  
25 decision setting aside your sympathy and prejudice

1 in this case. So whatever sympathy and bias and  
2 prejudice you have, you took an oath to set that  
3 aside, listen to the evidence, listen to the  
4 witnesses, and hear what they had to say, see if it  
5 makes sense.

6 Also at the beginning you have the  
7 reasonable doubt instruction, and the instruction  
8 tells you there are few things in this world that we  
9 know with absolute certainty, and in the criminal  
10 case, the law does not require proof that overcomes  
11 every possible doubt. We have to exclude only  
12 reasonable doubt.

13 So as we talk about the evidence in this  
14 case, it's important for you to ask yourselves: Do  
15 I have a doubt, and is my doubt reasonable in light  
16 of what I know from my common sense and experience  
17 in life, and from what I know about the evidence in  
18 this case?

19 If you're firmly convinced that each of  
20 these gentlemen is guilty, then you must find them  
21 guilty as charged. So the first thing I want to  
22 talk about on this particular topic is the idea of  
23 paperwork. Right? There is a lot of talk about  
24 paperwork in this case, and that alone could be a  
25 deciding factor in your verdict.

1           So in opening statements one of the  
2 attorneys told you that she would prove that there  
3 was no paperwork whatsoever. But you've heard  
4 evidence through a number of witnesses that there  
5 was paperwork; that there was paperwork on Javier  
6 Molina at least a year prior that people had been  
7 sitting on and not acting on, and Javier Molina's  
8 life was extended because other people did not  
9 follow through with the paperwork.

10           So if you believe in this case that there  
11 was paperwork indicating that Javier Molina had  
12 cooperated with law enforcement, you're actually a  
13 very large part of the way there, because you have  
14 to think about what the duties were as people who  
15 were SNM Gang members. For people like Daniel  
16 Sanchez who was a llavero, or key holder, for the  
17 pod, he had certain duties and responsibilities as  
18 the paperwork arrived, and that was to make sure  
19 that Javier Molina was killed.

20           And the same thing applies with Carlos  
21 Herrera. If you believe that the paperwork was  
22 there, you also know that he had a duty to make sure  
23 that Javier Molina was murdered, because that was  
24 part of his responsibility.

25           So what you know from the SNM is that you

1 have to follow orders and sometimes if you don't  
2 follow the orders, it comes down on you. So it was  
3 the responsibilities that they carried as leaders in  
4 the gang, that the paperwork was there, you know it  
5 had to be done, and you know that they did it.

6 So that's kind of an interesting thing  
7 about this case. The paperwork alone tells you if  
8 it was there, it had to be done, and they were the  
9 ones who did it.

10 With someone like Mr. Baca, for example,  
11 as you heard conversation which I'll point out to  
12 you later, that he directed that the paperwork go  
13 down, that he asked the paperwork be sent from  
14 someone named Cheech to David Calbert, also known as  
15 Spider, to Mr. Urquizo, down to the Southern New  
16 Mexico Correctional Facility. There is basically a  
17 trail that we know from the evidence in this case  
18 indicating that the paperwork had arrived.

19 Now, the judge has instructed you with  
20 certain statements that they're only supposed to be  
21 used against certain people. So for example, Carlos  
22 Herrera, his recorded statement is only to be used  
23 against him. But Carlos Herrera in his statement  
24 acknowledged he knew there was paperwork. His own  
25 words said that. So if that's the case, he had a

1 duty to kill Javier Molina under the gang's rules.

2 And the same thing applies to Rudy Perez.

3 Rudy Perez indicated in his own statement, which can  
4 be used only against him, that there was paperwork.

5 And in fact, he acknowledged that there was

6 paperwork a year before, and he criticized those who

7 didn't get it done the year prior. As a good

8 soldier, Rudy Perez was required not to leave his

9 brothers flojas, as they call it. You don't leave

10 your brothers hanging. So when his brothers came to

11 him asking for a piece of metal from his walker, he

12 provided it. And that's what he was supposed to do,

13 because in the SNM, you do things because it's

14 expected of you by virtue of your membership in the

15 enterprise. That's just the way it works.

16 So if you understand basic chain of

17 command, you understand what happened in this case

18 and why it happened.

19 Now, in addition to the reasonable doubt

20 instruction, there is another instruction on

21 circumstantial and direct evidence, and it tells you

22 they're the same. You're allowed to connect the

23 dots to make inferences that make sense in light of

24 reason and common sense. So those two instructions

25 both tell you the same thing. When you walked

1 through those doors, you didn't have to check your  
2 reason and common sense in at the door. You get to  
3 bring that with you and you make your decisions  
4 based on that.

5 You're going to have an instruction on the  
6 credibility of witnesses, instruction number 7. It  
7 tells you the things you should look at when you  
8 judge all the people who came through here and sat  
9 on the stand. And we invite you to do that. Listen  
10 to what they had to say, listen to why they said it,  
11 and see if it made sense to you in light of the  
12 other evidence in the case and in light of what  
13 other people told you.

14 Now, certainly the defense will allege  
15 that the witnesses colluded with each other to put  
16 together a story to convict these men here. And  
17 admittedly, those -- at least three or four of them  
18 told you when this was a state court case, they did.  
19 They, in fact, were going to pull a fraud on the  
20 Court. If you recall, Mario Rodriguez was upset  
21 with Mr. Armenta because he went up to the same  
22 shower where Mario Rodriguez or Blue was getting rid  
23 of the shank, and he felt that that brought  
24 attention to him and he got charged. As a result,  
25 Blue told Jerry Armenta he needed to take the rap



1 for what happened with the Molina murder. He was  
2 clearly on video and it was easy for him to do it.

3 So you saw the paperwork, you saw the  
4 things they submitted to state court. They had, in  
5 fact, submitted pleadings to the Court saying, "I  
6 will swear in court that Jerry Montoya had nothing  
7 to do with this, that I never saw a weapon in his  
8 hand," and things of that nature.

9 That's a scheme you could see coming a  
10 mile away. If you look at that paperwork, that was  
11 never going to fly. But they tried it. I mean,  
12 that's what SNM members did. And they were active  
13 members, so they did what was expected of them.  
14 Everybody was going to walk except for Jerry  
15 Armenta.

16 And Jerry Montoya told you, "That was my  
17 ticket to freedom." So when he got that out of the  
18 blue, he sent it to his lawyer immediately and tried  
19 to get people immunity so they could get him out of  
20 this case. That's what they did.

21 And that's what they did when they were  
22 active SNM Gang members. But they're not those  
23 people anymore. They still have, obviously, history  
24 and past, and they still use drugs. Even when Agent  
25 Acee and the Government told them, "Don't use

1 drugs," if you've ever known anybody with an  
2 addiction to alcohol or drugs, it's never as easy as  
3 just saying, "Quit using." We all know that from  
4 our reason and common sense.

5 And so they did. They broke the rules and  
6 they paid for it. So the Government held them  
7 accountable and two things happened. One: They  
8 stopped being used as confidential human sources for  
9 the FBI; the FBI cut them off. When they were  
10 involved with sexual activity at the prison when  
11 they weren't supposed to, they got cut off. And for  
12 some of them, the consequences were severe. If you  
13 remember, Javier Rubio, also known as BB, gave up 20  
14 years of good time as a result of that mistake that  
15 he made. And other people lost good time, too.

16 So there were two things going on. One,  
17 they were confidential human sources; they paid a  
18 price for that. But they still had an obligation to  
19 come here as witnesses, and that's what they did.

20 So obviously, there was collusion before,  
21 but as we asked other witnesses, do you see anything  
22 like that once this case became a federal case? In  
23 December of 2015, did that activity continue? And  
24 it didn't.

25 Now, they did other things, admittedly,

1 and they told you that, and they got punished for it  
2 on the stand. When they messed up, we turned that  
3 information over to the defense, and the defense  
4 beat them mercilessly with them, as they should  
5 have. They should have taken their licks.

6 So think about that. But you still have  
7 to think about who they are, who they were, and who  
8 they want to be. Because these are men that are  
9 trying to change their lives. And when you think  
10 about credibility in these cases, remember, most of  
11 these people, anyone involved in the murder, pled to  
12 life. So right now they're getting a life sentence,  
13 hoping to get a reduction from the Government, and  
14 even if we file something on their behalf, the judge  
15 has the final say.

16 So there is something to that. It weighs  
17 heavily on them, and they don't want to step out of  
18 line, because you'll see in another instruction that  
19 accomplice liability or time when you get  
20 immunity -- one thing that doesn't protect you is  
21 lying under oath. So they had a requirement to do  
22 that.

23 The other thing about that is, when it  
24 comes to credibility of witnesses, it's not as easy  
25 in this case as saying, "I'm willing to come and

1 testify on behalf of the Government." Because even  
2 though they have punishment they face from us, each  
3 one of them who took the stand has a death penalty  
4 imposed upon them by the SNM. Everybody knows that.  
5 Those are the rules. And we're here because  
6 somebody cooperated with law enforcement. We're  
7 here because Javier Molina cooperated with law  
8 enforcement, and he suffered the ultimate price for  
9 that. And each of these gentlemen faces the same  
10 consequences if someone catches up to them at the  
11 wrong place at the wrong time.

12 So don't forget that. Be mindful of what  
13 it means for them to take the stand in this case.  
14 It's not a regular case in that way.

15 The instruction on accomplice liability  
16 tells you unsupported testimony of an alleged  
17 accomplice, unless you believe the unsupported  
18 testimony beyond a reasonable doubt, is something  
19 you shouldn't convict on. You can convict on the  
20 testimony of one of those people who took the stand  
21 if you believe them. You just have to believe them  
22 beyond a reasonable doubt. And that's if it's  
23 unsupported testimony. In this case, remember, most  
24 of that testimony was supported. There were  
25 multiple accounts of what happened. A lot of that

1 stuff overlapped and a lot of that stuff was  
2 corroborated by other evidence, including the  
3 recordings. So there is corroboration.

4 And for someone, for example, like Mario  
5 Rodriguez, he was sitting over here just four months  
6 ago on the other side of the room when he decided to  
7 testify. He said he was fatigued, he was just done  
8 with the gang. He was tired of carrying a shank all  
9 the time. He carried a shank with him every time he  
10 came to court. When he agreed to cooperate, he laid  
11 down his arms. And that's a significant act that  
12 should not be lost on you in deciding someone's  
13 credibility like that. Because for Mario Rodriguez,  
14 who the defense will most certainly attack with  
15 everything they have because they need to, that  
16 means something. Someone who has been in prison  
17 almost half his life now is a different person and  
18 he can't go back to who he was. You saw the videos  
19 of him and the things he did. That man was one  
20 hundred percent committed to the cause. He was all  
21 in for the SNM. Someone who's all in for the SNM  
22 who turned his back on the SNM, he's now all in in  
23 the other direction. So he had a real motive to  
24 tell the truth about what happened, and what  
25 happened behind the scenes. So keep that in mind,

1 as well. And keep in mind that that testimony is  
2 supported by other facts in this case.

3 At this point I'm going to talk to you  
4 more about the elements of the offense. And this is  
5 my first time using PowerPoint, so something will  
6 most assuredly go wrong here.

7 Okay. We're off to a good start. So what  
8 we have to prove is the existence of an enterprise.  
9 And there are three components to that. So there is  
10 a common purpose; an ongoing organization, either  
11 formal or informal; and personnel who function as a  
12 continuing unit.

13 This is a pretty easy element. In every  
14 charge in this case, this is an element for each of  
15 them. So if you find it as to one, you can easily  
16 find as to any other count of this indictment.

17 You heard from Julian Romero that the SNM  
18 formed following the prison riot in 1980, and  
19 they've been in existence ever since. You heard  
20 from multiple people what the purpose is of the  
21 enterprise. It's to dominate, it's to extort, it's  
22 to attack people, it's to deal in drugs and drug  
23 trafficking. They do have a common purpose, and  
24 that's the first part of that. It's an ongoing  
25 organization, either formal or informal, and it

1 functions as a continuing unit.

2           When you think about this element, you can  
3 think about Congress. Congress is a similar type of  
4 body as the SNM, and that's not meant to be a  
5 political statement about Congress, but if you think  
6 about it, Congress is a body that has been  
7 continuing for some time now. They have a purpose.  
8 It's ideally to pass laws and give us a budget.  
9 They have members who, as you'll see in the  
10 instruction, come and go with time, and you have  
11 leadership that changes over time.

12           And so in the same way, the SNM works just  
13 like that. It's a continuing unit, they have a  
14 purpose, you're heard about leadership changes over  
15 the years, you've heard of something called a tabla.  
16 Those are leaders. You've heard of llaveros. Those  
17 are leaders, typically, of the pods. And so in a  
18 similar way, the SNM works like that. And even when  
19 there have been divisions in the SNM -- you heard  
20 about the Julian Romero and Gerald Archuleta split;  
21 that's when one man slept with another man's wife or  
22 girlfriend. That caused a real division of the  
23 gang. And for years people got hurt and even killed  
24 over that division. But remember what the witnesses  
25 said. Even when there was a division within the

1 gang, it was one gang. If they ever went to war  
2 against anybody, they pulled together and they would  
3 fight against other people. You heard about one  
4 fight with the Aryan Brotherhood at one point that  
5 Gerald Archuleta told you about.

6 Congress is the same way. We have  
7 Republicans, Democrats, Green Party, Independents,  
8 who often fight and disagree. But if someone  
9 attacked us and we were going to go to war, they  
10 would pull together.

11 And it's the same idea with the SNM. They  
12 were always one, one unit.

13 So when we think about them, they have a  
14 common purpose, engaged in conduct over a period of  
15 time, they have a purpose, they have relationships  
16 among those associated with the enterprise. These  
17 guys all refer to each other as brother or carnal.  
18 They live in the same pod because of their behavior,  
19 and so they have known each other, some of these  
20 people, for 30 or 40 years. So there is a  
21 relationship among these members and they owe each  
22 other a duty to each other.

23 And then the third part you have to find  
24 in order for this to be a enterprise is longevity  
25 sufficient to permit those associates to pursue the



1 enterprise's purpose. And as I stated, they've been  
2 here since the '80s, doing what they do. And so if  
3 you find each of those things, you're going to --  
4 you will have found the first element as to each  
5 crime charged in this case.

6           The other thing the instruction tells you  
7 is that even though we have it in this case, the  
8 group need not have a hierarchical structure or  
9 chain of command. This enterprise does. Decisions  
10 may be made on an ad hoc basis and by any number of  
11 methods by majority vote, consensus, a show of  
12 strength; and members of the group need not have  
13 fixed roles. They may perform different roles at  
14 different times. And that's what the SNM does. And  
15 they also have to operate separate and apart from  
16 what they do. So in other words, if the enterprise  
17 quit selling drugs, would they still be a prison  
18 gang? They would. So they would operate separately  
19 and independently from the activity that they're  
20 engaged in. For each of those, the gang has  
21 established as an enterprise beyond a reasonable  
22 doubt.

23           Here are some pictures of the gang. As  
24 you know, they do have a common purpose, identify  
25 with each other. Sometimes as they earn their

1 bones, they get the Zia symbol with the S in the  
2 middle of it. Sometimes they get a tattoo that says  
3 "Sindicato," and this is a way that they also  
4 identify with each other.

5 You heard testimony that once you earn  
6 your bones, you get to wear the tattoo. Some people  
7 have Zias and things like that, but it has more  
8 meaning once you have the S in the tattoo.

9 Showing you some pictures, Government's  
10 Exhibit 251-A, various people in prison. You  
11 recognize -- if you don't recognize him, the person  
12 I just circled there is Big Jake. He was one of the  
13 first cooperators you saw testify in this case. He  
14 looks even bigger there. He looks pretty scary.  
15 But that's him. You also have Red and others. And  
16 Red being Timothy Martinez.

17 And so you notice that over the years,  
18 that's one thing these people would do is, they  
19 would take pictures together and hang out, do things  
20 that gang members do, and sometimes even show up  
21 with art. Some of these guys are pretty talented.

22 The next element is interstate commerce.  
23 You'll see from the instruction that only a minimal  
24 effect on commerce is necessary. So we have to  
25 prove that the enterprise, the gang, engaged in

1 interstate commerce. So we have things like use of  
2 the mail, use of the phone systems, drug  
3 trafficking, and even travel. So that, once again,  
4 that is a fairly easy element to establish. We know  
5 that they did these things. You heard even one  
6 simple example is that somebody mailed Suboxone  
7 to -- Jake Armijo mailed Suboxone to Gerald  
8 Archuleta when he was living in Tennessee. Do you  
9 remember, he'd been out of the prison for a few  
10 years. Gerald Archuleta is also known as Styx, and  
11 from time to time they would mail each other back  
12 and forth, and also, in this case from time to time,  
13 he would mail Suboxone to him.

14 So the use of each these things that  
15 travel in commerce, basically things that travel  
16 across state lines or affect things like that, are  
17 things that involve interstate commerce. So once  
18 again, that's a fairly easy element to prove, and  
19 it's only a minimal effect on commerce that's  
20 required for us to meet this element.

21 Okay. The next is: The enterprise  
22 engaged in racketeering activity. You heard plenty  
23 of that in this case. Things that constitute  
24 racketeering activity are murders, drug trafficking,  
25 and witness intimidation. Those are the three easy

1 ones.

2 So you heard from the testimony that  
3 Matthew Cavalier was also murdered for snitching or  
4 cooperating. And Roy Paul Martinez told you that he  
5 was involved in that.

6 And the sad, ironic thing about that  
7 murder is, if you remember, when Roy Paul Martinez  
8 first entered prison, it was Matthew Cavalier who  
9 looked out for him. He was supposed to be hit by  
10 the LC, the Los Carnales, and there was a deal or a  
11 truce that if the SNM got rid of Roy Paul Martinez,  
12 that they could have the truce. But some people  
13 weren't in favor of that truce, and it was actually  
14 Matthew Cavalier who helped Roy Paul Martinez and  
15 rescued him. And they considered each other  
16 friends, but in the SNM, that doesn't matter. If  
17 you get an order, you've got to follow through with  
18 it.

19 So if you recall, those two gentlemen were  
20 in jail together and word had come that Matthew  
21 Cavalier had broken the rules. Roy Paul Martinez  
22 was at the same facility at the same time, and he  
23 and others murdered Matthew Cavalier, because that's  
24 what the rules required. Once again, it didn't  
25 matter that they liked each other or that they were

1 friends. One of the last things that Matthew  
2 Cavalier told him was, "Don't do it, Roy." And he  
3 did. Because that's what he was supposed to do as a  
4 member of the gang.

5 You also heard from Frederico Muñoz. He  
6 testified that he was also an SNM member who bought  
7 one hundred percent into the SNM Gang. And you  
8 heard about the barber shop murder. Frederico Muñoz  
9 was on the streets, he ran into somebody at the  
10 barber shop who he believed was a Los Carnales gang  
11 member, they identified each other as gang members,  
12 and merely because he was a member of a rival gang,  
13 Frederico Muñoz shot him down in cold blood. And he  
14 did that because that's what they're supposed to do.  
15 Those are the rules.

16 He also killed Felix Martinez for what's  
17 called either snitching or jumping fences. Jumping  
18 fences is when you belong to another gang and you  
19 jump into the SNM Gang. It's also prohibited, and  
20 also he paid the consequences for that.

21 Freddie Sanchez -- Benjamin Clark was a  
22 witness, actually a Government cooperator we didn't  
23 call, but the defense called him. He told you he  
24 was part of the Freddie Sanchez murder, so there is  
25 another murder there.

1           And then you heard from Billy Cordova that  
2 he was also responsible for the death of a Los  
3 Carnales gang member. In that case, that was guy  
4 who was kind of dealing in their backyard. It  
5 wasn't acceptable to them, and Billy Cordova helped  
6 prepare what's called a hotshot. The kid went in,  
7 gave this man a shot, and as far as we know, that  
8 was the end of him. There is no mention of whatever  
9 happened to that person, but when they took him out  
10 of the house, they basically dumped him on the steps  
11 of a church. Once again, he did that because that's  
12 what you do when you're an SNM Gang member.

13           I just said "among others." We don't have  
14 to go through it. If you find that the enterprise  
15 engaged in any of these things, just the murders  
16 alone, then you can find that the enterprise engaged  
17 in racketeering activity.

18           I also listed drug trafficking. You heard  
19 from virtually every member of the gang who came in  
20 here and testified that they had been involved with  
21 drug trafficking themselves, they had been involved  
22 with bringing drugs into the prisons through visits  
23 and through other means.

24           And two specific examples are Chris  
25 Garcia. You heard a lot about him. And he was the

1 one who eventually was on the phone conspiring to  
2 murder Gregg Marcantel with Anthony Baca. You heard  
3 phone calls from him. He's the one who supplied the  
4 gun to Mario Montoya. And you heard from some  
5 people that when they got out of prison, Chris  
6 Garcia is the person you would see, because he would  
7 set you up on the streets. He would give you a  
8 little bit of dope, a little bit of money, and he'd  
9 get you on your way. Kind of a start-up kit for  
10 when you got on the streets.

11 Mario Montoya said he bought from Chris  
12 Garcia possibly hundreds of times. And sometimes  
13 they would send drugs into the prison. For example,  
14 Billy Cordova got drugs from Chris Garcia and he  
15 sent the drugs into the prison to Daniel Sanchez and  
16 to Benjamin Clark. So that's an example of drug  
17 trafficking activities on behalf of the enterprise.  
18 And I listed virtually everyone else. You heard  
19 plenty of testimony on that.

20 Another one is witness intimidation.  
21 Oddly enough, during this trial, another SNM Gang  
22 member tried to intimidate two of the witnesses in  
23 this case. One is Lupe Urquizo. When he was at a  
24 jail facility with a person named Edward Troup, who  
25 was an SNM Gang member pending charges, he said some

1 things to him to try to scare him a little bit. And  
2 then Edward Troup also said things to Mario Montoya.  
3 Mario Montoya said, "What Troup told me was, after  
4 the Government is done prosecuting all of the  
5 defendants, they're going to come after the  
6 cooperators and make them do time as well." So he  
7 kind of tried to plant that seed of doubt in his  
8 mind, hoping that he wouldn't testify.

9 We also have Anthony Baca, one of the  
10 defendants in this case, and we have two people  
11 there. One is Jerry Armenta, who was a witness in  
12 this case against the defendants. And you heard  
13 testimony, including in the recordings, that Anthony  
14 Baca wanted Armenta harmed and he wanted a member of  
15 his family harmed or at least scared, for the same  
16 reason. If you testify against the S, you take the  
17 stand, you're going to pay. And that's what he did.

18 The other was Adam Vigil. You heard in  
19 the recordings at the very beginning involving Eric  
20 Duran, one of the very first calls that Mario  
21 Montoya got was a call where they said, "Santistevan  
22 and Vigil are causing us a real desmadre. They're  
23 really causing problems with the gang, and we need  
24 to take care of these guys."

25 At the time that happened, Adam Vigil was



1 identified as an expert witness for the State when  
2 the Molina murder was a state charge. So you have  
3 evidence in this case of witness tampering, as well,  
4 and those are all racketeering activities. So if  
5 you find that the SNM did this, that element is met.

6 I'm going to skip this one because this is  
7 really where the rubber meets the road. This is the  
8 only element that's really going to be contested, as  
9 I see it. Obviously, defendants can make the  
10 arguments that they want to. But the question  
11 ultimately will be: Of the five elements, did these  
12 defendants do these things? Did they conspire to  
13 murder Javier Molina? Did they murder Javier  
14 Molina? And did Mr. Baca conspire to murder Dwayne  
15 Santistevan and Gregg Marcantel?

16 So we'll come back to that, but that's  
17 probably the only element that's largely going to be  
18 contested.

19 The fifth element is something I'm going  
20 to call the motive or intent element. And that's  
21 that when everybody commits a crime that's charged  
22 under the statute, it has to be for the purpose of  
23 committing or conspiring to commit a crime of  
24 violence for the purpose of gaining entrance to or  
25 maintaining or increasing their position in the

1 enterprise. So in other words, if you're a llavero,  
2 like Daniel Sanchez or Carlos Herrera, and you don't  
3 do what you're supposed to do, you get fired from  
4 your job. Sometimes it's a little more than what we  
5 call being fired, but that's what happens. And so  
6 when you hold that position, you do it because it's  
7 expected of you by virtue of your membership. And  
8 so the short way to think about it is, you do it  
9 because you're supposed to do it as a member of the  
10 gang.

11 And so that's why I go back to the  
12 paperwork. If you find the paperwork was there, if  
13 you believe that, which you should, because it's  
14 supported by the evidence, you know they had certain  
15 obligations to make sure things happened the way  
16 they were supposed to.

17 Now, one part of that element, if I can  
18 find it here, sometimes people do things for  
19 multiple reasons. And that can be the case and you  
20 can still meet this element or find that this  
21 element is met. Let me see if I can find it.

22 Here it is. So in the instruction on -- I  
23 think it's instruction 24. When you get the  
24 elements, it says the fifth element is that you do  
25 this for the purpose of gaining entrance to or

1 maintaining or increasing your position. So you've  
2 heard about people earning their bones. That's what  
3 happens is, they have to hurt somebody, they have to  
4 draw blood, stab somebody or kill somebody to get  
5 into the gang. That's the purpose of -- one of the  
6 purposes of this element.

7 The other is, like I said, when you have  
8 someone like Rudy Perez, you don't leave a brother  
9 flopas. You don't leave them hanging. And it was  
10 important for him to give that shank so they -- the  
11 piece of his walker to be made into shanks so that  
12 Javier Molina could be murdered.

13 In this case, that's particularly  
14 important because you heard the testimony of Billy  
15 Cordova and you heard testimony about Carlos Herrera  
16 telling people at the door, "Just get it done."  
17 There was a certain amount of urgency that this get  
18 done, and if Rudy Perez had not provided the metal  
19 from his walker, there is a chance that Javier  
20 Molina could have survived.

21 And this is why. You heard testimony from  
22 Billy Cordova that Archie Varela, Mauricio Varela,  
23 was going around the pod talking and saying things  
24 he shouldn't have said because this was supposed to  
25 be a low-key operation. And so the concern from

1 Carlos Herrera was that this get done now and that  
2 he not escape on their watch. That's on the  
3 recordings; this wasn't going to happen on our  
4 watch. Because if confidential information came out  
5 and people found out that he was in harm's way,  
6 someone could have kited Javier Molina out of the  
7 pod.

8 And so there was a certain amount of  
9 urgency here, and Rudy Perez helped to make it  
10 happen. Had he not done that, there is a good  
11 chance Javier Molina could have survived.

12 You also remember from Billy Cordova that  
13 Daniel Sanchez, I think around -- after lunchtime  
14 the day that Javier Molina was murdered, asked Billy  
15 Cordova if he had a shank, and Billy Cordova said,  
16 "No, I can't give you my shank."

17 So about 20 minutes later, Daniel Sanchez  
18 goes back to the door, calls Billy Cordova, says,  
19 "Hey, we're okay." He uses the term "Fat Ass." "We  
20 got the shanks. We got something from Fat Ass."  
21 And he knew that referred to Rudy Perez. So once  
22 again, there was a real rush to get metal to make  
23 shanks, and that's what happened.

24 Let me get back to the element. It says  
25 it's not necessary for the Government to prove that

1 this was the sole purpose of the defendant in  
2 committing the charged crime. You only need to find  
3 that it was a substantial purpose or that a  
4 defendant committed the charged crime as an integral  
5 aspect of membership in the enterprise.

6 That's what I said. You do it because  
7 it's expected of you in your membership. And you  
8 can have multiple reasons for doing something that  
9 can meet this element. One of those examples is --  
10 you remember Baby Rob, Robert Martinez, and Roy Paul  
11 Martinez also known as Shadow. They wrote letters  
12 calling for the murder of Gregg Marcantel. In at  
13 least one of those letters it refers to viejo, who  
14 they said refers to Anthony Baca.

15 The defense questioned them and said,  
16 "Well, isn't it true, Robert Martinez, that you were  
17 just saying that because you wanted to get moved out  
18 of state?"

19 And he truthfully, "Yes, I did want to get  
20 moved out of state. But I certainly didn't mind if  
21 Marcantel or Santistevan were murdered either along  
22 the way."

23 So you can see that is a situation where  
24 you might have multiple reasons for wanting to  
25 commit the crime, but as long as one of those

1 reasons is to meet this element, we're okay.

2 Another important instruction here,  
3 getting to what we have to prove, is in Count 7,  
4 which is the murder count, you're going to see  
5 what's called in instruction 33 aiding and abetting.  
6 That takes us back to when we first started this  
7 case, when you were hoping you wouldn't get picked  
8 as jurors, Mr. Beck gave you an example of the bank  
9 robber. And he said, "Okay, I'm going to task  
10 somebody, one of you jurors, to go into the bank and  
11 you're going to rob the bank. I'm going to pick  
12 someone else to maybe be the get-away driver."

13 And he asked you, the members who were  
14 subject to getting picked, "Am I guilty of the crime  
15 charged?"

16 And someone said, "Yes, because you're the  
17 mastermind."

18 And he said, "Well, I didn't go in the  
19 bank. I didn't rob anybody. I didn't drive a car  
20 to get away. Why am I held responsible?"

21 Well, you're responsible because the law  
22 says you're responsible. So this instruction tells  
23 you -- it's also called accomplice liability, when  
24 you have accomplices. And the Government has to  
25 prove one or two things. So if you believe that any

1 of these men committed the crime or they aided and  
2 abetted the crime, they're just as guilty as anybody  
3 else. It's just like the example of the mastermind  
4 who called the shots.

5 So basically two elements there. First,  
6 someone else committed the charged crime. And  
7 second, any one of the defendants intentionally  
8 associated themselves in some way with the crime and  
9 intentionally participated in it as he would in  
10 something he wished to bring about. This means the  
11 Government must prove that any of these defendants  
12 consciously shared the other person's knowledge of  
13 the underlying criminal act and intended to help  
14 him.

15 So you can use as an example for any of  
16 these people, for example, Defendant Baca caused the  
17 paperwork to be transferred from PNM from the North  
18 facility to the South facility to Southern on his  
19 orders. So he caused that agreement to be brought  
20 about because he wanted the intended result.

21 For Daniel Sanchez, when the word reached  
22 them in the pod, he sprung into action with Mario  
23 Rodriguez, who never denied his involvement in what  
24 happened here. So Mario Rodriguez was tasked, one,  
25 with getting Red, Timothy Martinez, involved because

1 Daniel Sanchez knew that Timothy Martinez would not  
2 do it if he asked him, maybe to his detriment, but  
3 he knew that if he called Blue into action, Blue  
4 would tell Red, "This is what you need to do." And  
5 Red did, much to his chagrin. He didn't want to do  
6 it. You heard that he killed his friend. Timothy  
7 Martinez even cried on the stand a couple of times  
8 when he talked about the last words he heard his  
9 friend say after he betrayed him.

10 Someone else like Carlos Herrera, for  
11 example, who was responsible for overseeing yellow  
12 pod, had to make sure that the message got from his  
13 pod to the next pod, to make sure blue pod had  
14 verification of the paperwork so the murder could  
15 happen.

16 Rudy Perez, same thing. He was in his  
17 cell. You heard him on the recordings. "I was in  
18 my cell when it went down." What did he do? Once  
19 again, he made his shanks available so that Javier  
20 Molina could be killed.

21 So if you meet one of those two elements,  
22 you find that any of these men was an aider or  
23 abettor or an accomplice, they are guilty of murder.

24 As we kind of move towards what this case  
25 is all about, we have a really simple time line here



1 as we get into the elements and what we're proving  
2 that each of these men did.

3 In 2013 you have the start of the  
4 conspiracies to murder Marcantel and Santistevan.  
5 You heard evidence from Eric Duran and others that  
6 as far back as 2013, they were not happy with  
7 administration. There was already talk then of  
8 hitting high-level officials.

9 It gets worse for the SNM in 2014, once  
10 the Javier Molina murder takes place. And that's  
11 because, as you recall, once that murder went down,  
12 SNM was locked down completely for over a year. And  
13 at that time, that's also when the state charges  
14 were filed. Jerry Armenta, Jerry Montoya, and Mario  
15 Rodriguez are charged. Two of them are charged with  
16 murder. Blue is just charged with tampering with  
17 evidence and some other lesser crimes when he was  
18 basically caught putting the shank down the drain.

19 So time passes. The SNM is locked down.  
20 In March of 2015 the conspiracies to murder  
21 Marcantel and Santistevan continue.

22 In February of 2015, that's when Eric  
23 Duran asked to speak to the FBI. The defense will  
24 tell you, well, he came on board because was in  
25 trouble. But he really wasn't. Not much came of

1 what happened. You heard about a confrontation he  
2 supposedly had with Edward Urtiaga, who came and  
3 testified for the defense. You also heard that  
4 Edward Urtiaga has his own legal troubles at this  
5 point.

6 So the conspiracy continues, and  
7 eventually Eric Duran records Robert Martinez and  
8 Roy Martinez basically agreeing that these murder  
9 conspiracies should take place.

10 So Eric Duran comes on board. He does a  
11 few things. He records these people. He tells law  
12 enforcement about three murders, including the  
13 Javier Molina murder and the information he had  
14 there. And he is also the person, if you recall,  
15 who talked to Jerry Armenta when Jerry Armenta was  
16 going to take the fall, and he eventually said, you  
17 know, "Think about what's important to you."

18 And ultimately, as a result of that, he  
19 talked Jerry Armenta into falling away from this  
20 scheme with the SNM Gang members, and he agreed to  
21 cooperate as early as the state case, when it was a  
22 state case.

23 So from March 7, 2014, forward, SNM is not  
24 pleased with prison administration, because they're  
25 locked down. Some of them think it's unfair because

1 they weren't involved in the activity, but everybody  
2 got locked down.

3 July 13, 2015, is when Julian Romero was  
4 assaulted. And you remember that with that assault,  
5 they were bringing people out within either minutes  
6 or hours of lifting the lockdown, and you saw the  
7 video. They were only let out in four-person  
8 groups. Only four. And within minutes or hours of  
9 Julian Romero being released, a hit that was more  
10 than 10 years old comes back to haunt him, and  
11 Conrad Villegas just pounds him into submission.  
12 You saw the pictures of him, and I'll see if I have  
13 them over here in a bit. Let me go back to this.

14 So once Julian Romero was assaulted,  
15 they're locked down again. This wasn't even hours  
16 and the SNM was locked down and not going anywhere.  
17 They're displeased and, once again, they're not  
18 happy with the administration.

19 During this time, going back to March 7,  
20 2014, shortly after that, Gregg Marcantel has a  
21 discussion with the SNM Gang members. He tells  
22 people like Daniel Sanchez and Mr. Baca they're  
23 going out of state, and there is testimony that he  
24 tells other people that these guys cried when  
25 they're leaving out of state. Well, the SNM found

1 that very disrespectful, and they decided to push  
2 back against the administration.

3 So obviously, Baca and the others, in  
4 their mind, had motive to make the administration  
5 pay and they were going to show them who really runs  
6 the prison: The SNM, not the Corrections  
7 Department.

8 Moving forward in time, as a part of this  
9 operation, as Eric Duran let law enforcement know  
10 that Baca is someone who wants to kill law  
11 enforcement or corrections personnel, the FBI makes  
12 arrangements for them to be brought back to New  
13 Mexico. Mr. Baca believes he's won his appeals and  
14 he can basically thumb at the administration's face,  
15 not knowing that he's coming back to be recorded, to  
16 see if he really does want to kill these gentlemen,  
17 and it turns out he does. Eric Duran records  
18 Mr. Baca and others, and Mr. Baca is charged with a  
19 couple of murders.

20 Now, also in 2015, in terms of the overall  
21 investigation, Mario Montoya gets involved. You  
22 heard that on September 11, 2015, he was caught in a  
23 drug deal. He dealt with a guy who was a  
24 confidential informant and he got snagged.

25 You also heard that he was in the car in

1 his driveway and he wasn't complying with commands,  
2 and Agent Acee and others yanked him out of the car.  
3 They busted the window, pulled him out, and that day  
4 Mario Montoya was cooperating in a short amount of  
5 time. He was also recording -- well, I'll summarize  
6 those in a bit.

7 So all of this is leading up to December  
8 2015 when this becomes a federal case. The state  
9 charges have disappeared, and then becomes Billy  
10 Cordova. If you remember, Billy Cordova was at the  
11 Metropolitan Detention Center, or MDC, in  
12 Albuquerque pending a murder case. He actually was  
13 convicted. He was charged with murder and convicted  
14 of manslaughter. And when he comes back from court,  
15 all of his brothers are filling up MDC, and so he  
16 knows something happened, because now SNM members  
17 are all over the place.

18 But as people are talking about who is  
19 being charged and what they're being charged with,  
20 Billy Cordova thinks in his mind, I was next door in  
21 the yellow pod when the Molina murder went down. I  
22 notice two people are missing here. I notice Rudy  
23 Perez isn't here, and I notice Carlos Herrera isn't  
24 here.

25 So when FBI pulls him into the room, not

1 even thinking he's going to cooperate, they're just  
2 trying to protect other people cooperating and  
3 making it look like everyone is getting pulled in  
4 for questioning, they happened to catch Billy  
5 Cordova at the right time. He's decided he's done  
6 with the gang, he realizes he could be charged, and  
7 like most gang members, for some reason, PCing,  
8 protective custody, is not an option for them. It  
9 is an option, but they don't see it as a real  
10 option. And the other option is the dropout  
11 program, or RPP, and the same thing: You've heard  
12 from multiple witnesses who said, "I just didn't see  
13 that as an option. My way out and my way of never  
14 going back to the gang was to cooperate with law  
15 enforcement." And that's what he did.

16 So within a month, he is in a cell next to  
17 Rudy Perez, recording Rudy Perez making admissions  
18 about his contributions to the Molina murder. The  
19 following month he is next to Carlos Herrera,  
20 recording him making admissions about the Molina  
21 murder.

22 While I'm thinking about Billy Cordova, I  
23 expect what you're going to hear that is Rudy Perez'  
24 defense, my best guess, is that he was puffing, he  
25 was bragging, just like Billy Cordova. So you can

1 see a real contrast here because the defense pointed  
2 out to you, well, Billy Cordova said he was involved  
3 with the Sammy Chavez murder and, in fact, in court,  
4 he kind of proved his innocence, I guess. He was in  
5 jail when Sammy Chavez went down. So the defense  
6 says, well, you're not supposed to brag about things  
7 you didn't do. Those are the rules. And there's an  
8 example of Billy Cordova doing it.

9 Other people also said, "Well, he's also  
10 either told me or led me to believe he was involved  
11 in the Shane Dix homicide." And the same thing,  
12 Mario Montoya was involved in that, Chris Garcia was  
13 involved with that, and nobody says that Billy  
14 Cordova was involved with it, because he wasn't  
15 around, people who were there who were involved know  
16 he wasn't around, and therefore, he also didn't  
17 commit that crime.

18 So this is a point where -- and I'll get  
19 to the recordings in a bit. This is a point where  
20 you have a contrast between Billy Cordova and Rudy  
21 Perez and bragging.

22 So one of the differences -- there may be  
23 multiple differences -- are that when you look at  
24 Billy Cordova, you can pretty much conclusively  
25 agree that he didn't do those things, and maybe he

1 was bragging about things he didn't do. It's a  
2 rule. But like most rules in the SNM, sometimes  
3 they're followed, sometimes they're not. There's  
4 politics involved.

5 But with Rudy Perez, we have something  
6 different. Rudy Perez was at the crime scene. We  
7 know he had a walker. We know a piece came from his  
8 walker, and was sharpened in less than an hour when  
9 people went out to the yard, and someone was  
10 murdered with the piece from the walker. Because  
11 the real difference between those two -- that's  
12 where we find ourselves with Rudy Perez. When you  
13 listen to the recordings -- I invite you to listen  
14 to all of them; I think the longest one is maybe 30  
15 minutes -- you hear it's more than just bragging.  
16 Rudy Perez is doing a number of things. One, he's  
17 criticizing the way the crime went down. He said it  
18 never should have been that way. Jerry Armenta was  
19 less than 45 days to the door. Jerry Montoya was  
20 less than a year to the door. Timothy Martinez is  
21 less than 13 months to the door. There's no real  
22 reason for these guys to commit this crime -- they  
23 could if they wanted to -- unless they had to follow  
24 the rules of the gang.

25 So he says more than just bragging. He



1 talks about it, he criticizes the way it went down.  
2 He said it was done dirty. If it would have  
3 happened his way, he would have given the guy a  
4 hotshot, because he knew Molina was a drug user, and  
5 a hotshot, overdose of heroin, it's nice and clean.

6 Now, when we go back to the evidence and  
7 Mario Rodriguez is talking to Daniel Sanchez about  
8 this murder, remember what he said. "Hey, Dan Dan,  
9 you and me?"

10 Mario Rodriguez doesn't shy away from his  
11 contributions to this murder. He told you that.  
12 And he said, "You and me?"

13 And Daniel Sanchez said, "No, let me think  
14 of some names."

15 And eventually the names come out. And  
16 one of the claimed reasons is that they hadn't  
17 earned their bones. You heard from Jerry Armenta,  
18 he said, "Blue and Dan Dan wouldn't let me get the S  
19 in my tattoo on top of my head, because they didn't  
20 think I'd earned my bones." The llavero of the pod  
21 makes the shots. He calls the shots.

22 And so one potential reason is that they  
23 didn't earn their bones, but I submit to you there's  
24 at least another reason why Jerry Montoya, Jerry  
25 Armenta, and Timothy Martinez were picked for that

1 crime by Daniel Sanchez. And for the Jerrys, as  
2 they call them, one of them is what Billy Cordova  
3 said they call in SNM taking out the garbage with  
4 garbage. Because Jerry Armenta -- if you recall,  
5 the defense beat him up pretty good about his  
6 contributing to the delinquency of a minor charge  
7 and alleged and accused him of basically, I'll call  
8 it, child molestation; right?

9 Well, you heard Blue's testimony. He  
10 said, you know, he was kind of concerned that  
11 Armenta had messed up charges. So one way you take  
12 care of this problem is, you turn a guy into a  
13 torpedo and you want to get rid of him, you send him  
14 on what Rudy Perez called a suicide mission. Right?  
15 You're getting rid of garbage with garbage. Armenta  
16 was no good, it was easy to get rid of him that way.  
17 And that was Daniel Sanchez's decision.

18 Jerry Montoya was supposed to be killed  
19 the same time. If you remember, they were waiting  
20 for paperwork on Jerry Montoya and they were waiting  
21 for paperwork on Javier Molina. So Jerry Montoya is  
22 a witness today because the paperwork didn't arrive.  
23 Fortuitous circumstances, we'll call it.

24 But the same thing: Why would you not  
25 kill two birds with one stone by sending Jerry

1 Montoya on that mission? Once again, a decision by  
2 Daniel Sanchez.

3 And then Timothy Martinez is a good pick  
4 in this case because Timothy Martinez and Daniel  
5 Sanchez had some friction between them. Remember,  
6 there were some times when they didn't get along  
7 very well. And if Daniel Sanchez sent Timothy  
8 Martinez or Red on this mission and Red didn't do  
9 it, that was a way to get rid of Red. It's a  
10 shrewd, shrewd move by someone who is a leader in  
11 the SNM. I mean, that's a well-thought-out plan  
12 right there, to pick those three people.

13 And in Blue's case, Blue was just a down  
14 carnal. I mean, he was going to do it. So Blue  
15 didn't take much convincing, and he told you that  
16 himself. Actually, he wanted to do it with Dan Dan,  
17 but Dan Dan had other ideas.

18 And on top of that, one of the problems in  
19 this case with the video is that you have video.  
20 Remember, people, when they got sent on this  
21 mission, said, "Well, what about the cameras?"

22 And Daniel Sanchez's response, at least to  
23 Blue was, "Well, there is a blind spot where the  
24 cameras are. So don't worry about it."

25 But you also heard from Red that Blue told

1 him that Daniel Sanchez had a hearing coming up and  
2 he did not want to be caught on camera doing  
3 anything wrong.

4 And so there comes the suicide mission.  
5 If it would have been done right, we wouldn't have  
6 any video in this case at all. They would have  
7 covered the cameras. You saw in the pictures there  
8 are three cameras up above the doors there  
9 underneath what they call the -- I'll call it the  
10 fish tank or the bubble. We shouldn't have any  
11 video in this case at all, if he would have not been  
12 looking out for himself, if he would have been  
13 looking out for his brothers and not leaving them  
14 flojas, as they say.

15 So ultimately what you heard was when Blue  
16 was back up at the North, he was not happy with the  
17 way this happened and there's a conspiracy to murder  
18 Daniel Sanchez for at least a couple of reasons.  
19 One was, he didn't cover the cameras like he should  
20 have. And the other was, he didn't follow through  
21 with the plan to get rid of Jerry Armenta's shank.  
22 That was the plan. Mario Rodriguez was supposed to  
23 get rid of Jerry Montoya's shank, and you heard this  
24 from multiple witnesses. This isn't one person's  
25 story. Listen to the testimony from all the

1 witnesses.

2 And Jerry Armenta was supposed to give his  
3 shank to Dan Dan. When everything went down and it  
4 was out in the open, he turned to Daniel Sanchez,  
5 and Daniel Sanchez tells him, Just throw it in the  
6 garbage. Once again, he left him hanging. And so  
7 he, too, broke the rules and at some point there is  
8 a conspiracy to murder him, and you know why.

9 So that takes us through the time line of  
10 events there and gives you an idea of why we're  
11 here.

12 The other thing I missed is that we're  
13 here because Baca was upset and he was tired of  
14 being locked down. He wrote a letter to Jerry  
15 Roark, one of the directors of Prisons, director of  
16 the adult prisons. They had a meeting and Roark  
17 asked him, among other things, "If I let you out and  
18 you tell me that the SNM can make peace and be nice,  
19 will you stop recruiting?"

20 And that's something that Baca said he  
21 wasn't going to do. He was kind of wishy-washy  
22 about it. As a result, Roark did not feel  
23 comfortable letting him out, and within one month,  
24 almost to the day, Javier Molina is dead. And now,  
25 because they didn't let him out, in Baca's mind, now

1 you have a dead man on your hands.

2 So it's basically the SNM Gang version of  
3 throwing a tantrum. If you don't give me what I  
4 want, I push this issue a little bit harder, and  
5 something that hasn't been done in over a year when  
6 it should have been done gets done within a month.  
7 You can certainly see a motive for Baca to commit  
8 this crime.

9 Mr. Baca -- his arrest date was 12/3 of  
10 '15, as you heard. You see some of his tattoos.  
11 He's got the S there inside of his Zia symbol. On  
12 his stomach you can see a prison tower and then  
13 Nuevo Mexico and Syndicato.

14 Daniel Sanchez. Remember, if you look  
15 closely at Daniel Sanchez, he's got Zia symbols. He  
16 doesn't have any S in any of his tattoos, and  
17 neither does Mario Rodriguez. Remember, those two  
18 said, "We don't have tattoos. We basically have  
19 tattoos on our hearts, as SNM brothers." So you'll  
20 see Zias on Daniel Sanchez, but you won't see the  
21 SNM symbol upon him or Blue. And that's something  
22 they shared together. Remember, Blue looked up to  
23 him. He called Daniel Sanchez his big homie. But  
24 you can see his elbows. He's got Zia symbols. And  
25 of course, he's got N on one arm and M on the other

1 for New Mexico. Another Zia symbol is on his knee.

2 Carlos Herrera. Remember, he's the  
3 llavero of yellow pod. The 18 probably means 18th  
4 Street. We didn't hear any direct testimony on  
5 that, but we know there is a gang called 18th  
6 Street. And there is Carlos Herrera's SNM tattoo,  
7 the Zia with the S in the middle. And on his left  
8 hand you see the word Lazy, and that's what his  
9 nickname is. He's known as Lazy.

10 There is Rudy Perez, pictured in Exhibit  
11 541. Me vida loca, my crazy life, and brown pride  
12 on back. That's Exhibit 545.

13 Okay. Going to more of some of the  
14 evidence, you remember Big Jake, Manuel Jacob  
15 Armijo. One of the few SNM members or former  
16 members who actually walked through those doors and  
17 didn't come in in shackles. And he told you he was  
18 arrested a couple of times because he did use a  
19 couple of times, two or three times, while on  
20 conditions of release, but to his credit, he stayed  
21 out of the prison for about five years now. He's  
22 got a job, and he's just done with the S. He's one  
23 of those people who said, "I'm just tired of the  
24 hits. I'm tired of the violence. I'm tired of the  
25 politics." And that's kind of a common theme for

1 people who check out of the gang.

2 Now, among other things, Jake Armijo was  
3 good for telling you about the background of the S,  
4 about doing what's expected of you as a member of  
5 the S. If you remember, he was a bodyguard for one  
6 of the high-ranking members of the SNM, Angel Muñoz.  
7 He was a bodyguard in prison and he was a bodyguard  
8 on the streets. Someone disrespected Angel Muñoz at  
9 a party in Santa Fe, and Jake Armijo stabbed him for  
10 it. Jake Armijo also stabbed an LC member on the  
11 streets because that's what you were supposed to do.

12 But the thing about Big Jake now having  
13 turned his back on the gang, he told us a couple of  
14 very important things. One, in about 2011 or '12,  
15 before he was released from prison, Baby G, who is  
16 very close to Baca, told him, "Baca wants you to hit  
17 Molina."

18 So remember even hearing of this paperwork  
19 coming down in 2014, Baca already wanted Molina  
20 murdered. And what did Jake Armijo tell you? He  
21 said, "Is there paperwork?"

22 And Baby G, also known as Jonathan Gomez,  
23 said, "No, there is no paperwork."

24 And Big Jake said, "I'm not doing it."

25 And he put an order out in the pod that no



1 one was to touch Javier Molina until there was  
2 paperwork. And to his credit, in a sad way, I asked  
3 him, "Well, Mr. Armijo, what would have happened had  
4 the paperwork showed up?"

5 He said, "We would have killed Molina."

6 And I asked him why. He said, "Because I  
7 was a llavero and it was my job to make sure that  
8 that happened."

9 So luckily the paperwork didn't happen  
10 there. Jake Armijo wouldn't have walked through  
11 these doors. He'd probably be sitting in prison  
12 somewhere.

13 He told you before any of this happened,  
14 Anthony Baca already wanted Molina murdered. And  
15 you heard from other people this was ongoing for  
16 some time.

17 The other important thing he told you was  
18 that close in time to when everyone was arrested in  
19 December of 2015, that he went over to Chris  
20 Garcia's house to score some drugs. And while he  
21 was over there, he was having a discussion with  
22 Chris Garcia. Chris Garcia does a couple of things.  
23 One, he asks him, Big Jake, if he knows Mandel  
24 Parker, also known as Chuco. That's significant  
25 because if you remember, Mandel Parker was the other

1 person that Mario Montoya talked to about getting  
2 involved with the conspiracy to murder Marcantel.  
3 He told him about it, Mandel Parker bought into the  
4 idea, he was agreeable, and he was supposed to go  
5 with Mario Montoya to kill Gregg Marcantel,  
6 Secretary of the Department of Corrections.

7 And Chris Garcia asked him, asked Big Jake  
8 about him, because he apparently didn't trust him.  
9 As you remember, on the recordings, Mandel Parker is  
10 the one who Mario Montoya was supposed to give a  
11 hotshot to after the murders, and he was supposed to  
12 leave him there with the gun; and according to Chris  
13 Garcia's plan, maybe even put some hair from the  
14 barber shop on Mandel Parker.

15 So Chris Garcia asked him that. And the  
16 other thing he asked -- or actually tells Jake  
17 Armijo is, "Pup has us on a mission to kill  
18 Marcantel."

19 And that tells that you that Chris Garcia  
20 agreed with Anthony Baca to murder Gregg Marcantel.  
21 That's the conspiracy. That's the charge, I think  
22 probably charged either in Count 9 or 10 in this  
23 case. So clearly Jake Armijo, who didn't have a  
24 tablet, who was not charged in this case, was  
25 charged in a separate case, had no reason to believe

1 this was going to happen, came in and told you, "I  
2 had a conversation with Chris Garcia and Chris  
3 Garcia was on board."

4 Now, let me talk to you about something  
5 important there. Do you remember, Anthony Baca was  
6 working between two confidential informants. There  
7 was Anthony Baca wanting to murder Corrections  
8 officials, Eric Duran, Mario Montoya, Christopher  
9 Garcia, and Mandel Parker.

10 Now, we agree with the defense. You  
11 cannot conspire with a law enforcement person or  
12 with a confidential informant, because they don't  
13 really mean to break the law. They're doing it as  
14 part of an undercover operation. But they can pass  
15 the message on to someone else who will buy into the  
16 idea, and that's what happened, was that through the  
17 phone conversations, eventually Chris Garcia was  
18 left out of it, Pup said, "Don't tell him anything,"  
19 but eventually he got pulled in.

20 One thing we don't know, we don't have  
21 conversations captured, is whether or not Baca,  
22 through his wife or his mother, made additional  
23 phone calls to Chris Garcia. Because Mario Montoya  
24 would say, "I would say something to Chris Garcia  
25 and he already knew what was going on."

1           So there may have been another source of  
2 information that got Chris Garcia on board, but we  
3 know there was an agreement between Mandel Parker,  
4 Christopher Garcia, and Anthony Baca, with two  
5 informants being conduits of information to murder  
6 Gregg Marcantel. Remember, that's separate and  
7 apart from any of the recordings that you heard.

8           Going back to the paperwork, David Calbert  
9 is the person who got the paperwork from Cheech. If  
10 you recall, he was moving from maybe the North to  
11 the South, and then he got the paperwork from  
12 Cheech, he gave the paperwork to Lupe Urquizo.

13           So this is David Calbert. David Calbert  
14 was the one person the defense called Houdini  
15 because he was the one that jumped his cuffs and  
16 stabbed correction officers. He was feared, greatly  
17 feared.

18           Mario Rodriguez. You've seen this  
19 picture. The defense left this up for a long time  
20 during a lot of the trial so you could see how scary  
21 he was. Like I said, when he's one hundred percent,  
22 he's one hundred percent, what he does.

23           If you remember during trial, he was  
24 testifying and he got called up to the bench because  
25 there a question that needed to be asked that you

1 guys weren't supposed to hear. How many of you  
2 thought when he walked up to the bench he was going  
3 to bite my ear off? Anybody wonder that? This is  
4 the ear-biter. He's coming down, he's going to  
5 stand in front of all these lawyers. What is this  
6 guy going to do?

7 Well, I'm glad he didn't bite my ear off,  
8 but it shows you that he's changed his mindset. I'm  
9 not going to say he's an angel. I'm not going to  
10 say he's perfect. But he has a different mindset  
11 now. And you heard from Agent Stemo that the day he  
12 decided to cooperate, he actually shed some tears.  
13 And it looked like something had been lifted off of  
14 him. And it's probably that persona that he had to  
15 carry for so long. And maybe because of his  
16 charges, too, he felt like he always had to earn his  
17 way to prove himself. I don't know. You know, he  
18 got hit on that pretty hard from the same thing.  
19 There's something different about him now.

20 Timothy Martinez. So this is Red. He's  
21 the person who knocked out Javier Molina and was  
22 Javier Molina's very good friend. He didn't want to  
23 do it, and he told you, "I kind of choked him out.  
24 I was hoping to give him a fighting chance. I put  
25 him on the ground."

1           And he did give Javier Molina a little bit  
2 of a fighting chance, not enough. By the time the  
3 Jerrys were stabbing him, you heard from the person  
4 who did -- basically the coroner, the doctor, he  
5 wasn't going to last five minutes, even with medical  
6 help with his injuries. There is no way he would.  
7 But Timothy Martinez tried to do it.

8           You also heard at least two different  
9 witnesses say Timothy Martinez stomped on Javier  
10 Molina's head. If you remember why that happened,  
11 Blue told him to hurry up, and he was concerned that  
12 he was going to get caught not having knocked him  
13 out completely, and so to make it look good, he  
14 stomped on his friend's head. Once again, two  
15 people told you that, not one person. So think  
16 about what people told you independently of each  
17 other.

18           But that's Timothy Martinez, a guy who  
19 also shed some tears, big, tough gang member, on the  
20 stand when he told you about the last words that he  
21 heard his friend say. And when he told you, "Yeah,  
22 when I killed Javier Molina, I killed someone's son,  
23 I killed someone's brother, and that's what I did.  
24 I basically betrayed him. I should have done it  
25 differently, but I didn't."

1 Jerry Montoya. Once again, he was  
2 supposed to die that same weekend, that same time.  
3 He didn't die. And he participated in the murder.  
4 He did what he was supposed to do, and he and Jerry  
5 Armenta looked at each other before the murder and  
6 said, "It's either him or it's us."

7 And to ask the question, could they have  
8 done something else, they absolutely could have. I  
9 asked Jerry Armenta that on the stand. I said,  
10 "Well, couldn't you have PC'd? Couldn't you" -- at  
11 that point, remember from the video, the corrections  
12 officers and the nurse were in the pod at that time,  
13 and he didn't do anything. He made the wrong  
14 decision. He said, "PC'ing is different. It's not  
15 the thing to do. I was in a bind, and I did what I  
16 shouldn't have done."

17 Jerry Montoya, same thing. These two did  
18 not want to do this, but those are the rules. You  
19 hear on the recordings, the reglas are the reglas.  
20 The rules are the rules. Carlos Herrera says that  
21 in his recordings.

22 Jerry Montoya, as you know, has his own  
23 problems. He's continued to use. He picked up a  
24 new girlfriend at the corrections facility. She was  
25 a correction officer, and he did things he wasn't

1 supposed to do. You can take that into  
2 consideration. I understand that. But I want you  
3 to listen to what they said on the stand and see if  
4 what they told you makes sense in light of  
5 everything else going on.

6 Jerry Armenta. Like I told you, same  
7 thing. He shed a tear. I asked him how he felt  
8 afterwards. He felt pretty low. He cried a little  
9 bit. And once again, it makes sense when you know  
10 about his background, the defense hit him with it,  
11 was he may be a sex offender. And that's a no-go.  
12 You know the rules of the SNM. And so he was a  
13 perfect for this hit. Once again, if you need to  
14 pick someone for a suicide mission, here's your guy  
15 right here.

16 So the defense impeached him with his  
17 history, but what they also did was highlighted the  
18 fact that he was a perfect candidate for a suicide  
19 mission, and that's who he is.

20 I'll go through these quickly because I  
21 talked about them. If you look at date of Mario  
22 Rodriguez' letter, it's October 16, 2014. This is  
23 when they were still pulling the shenanigans in  
24 state court trying to get Jerry Armenta to take the  
25 fall for everybody. Take a look at the letter,



1 understand what was going on at the time, and  
2 understand that that stopped when it became a  
3 federal case.

4           The same thing with Jerry Montoya. Now,  
5 this one is fun because I said you can see this  
6 coming a mile away. This is a statement by Timothy  
7 Martinez dated November 3, 2014, and what he said  
8 is, "I want to recant my original statement and give  
9 you this one. Remember that statement I gave you  
10 before? I want to take that away, and I want you to  
11 listen to my new statement."

12           It's ridiculous. And like I said, you can  
13 sniff this a mile away.

14           So the important thing about credibility  
15 of witnesses in this trial is: Not only do they  
16 have to answer our questions. They had to grilled  
17 by the defense. And the defense got them. I mean,  
18 every chance they got to trip these guys up, to beat  
19 them up, ask questions however they wanted to, they  
20 did. But how did they hold up and how did their  
21 story hold up once the truth finally came out?  
22 That's what you have to consider at this point.

23           Okay. This is Jerry Armenta's letter to  
24 Jerry Montoya's attorney. Jerry Montoya saw this as  
25 a gift from above, but it didn't work out because

1 eventually Jerry Montoya -- well, here's Jerry  
2 Montoya sending a letter to his attorney saying,  
3 "Hey, look what I just got. Let's file this with  
4 the Court and let's see if I can get sprung."

5 Now, Government's Exhibit 757 I'm showing  
6 you is a letter Jerry Armenta wrote to Jerry  
7 Montoya, but it never reached him. This is the one  
8 that got intercepted by Corrections personnel, but  
9 this is where he tells Jerry Montoya, "It's over.  
10 I'm going to tell the truth about what happened."

11 And oddly enough, in here he says, "How it  
12 all went down from you picking up your hands when  
13 Blue handed you that piece."

14 If you recall, when Mario Rodriguez walked  
15 into Jerry Montoya's cell with that shank, Jerry  
16 Montoya lifted his hands, because he was a little  
17 bit worried that Blue was coming in with a shank for  
18 him. And oddly enough, there is corroboration, even  
19 here, of the stories. Now, the defense will say  
20 this is part of them getting their story together,  
21 but it's a pretty interesting fact to kind of pick  
22 out of the blue if you're going to make up a story.

23 Okay. Going back to corroboration of  
24 witnesses. The witnesses, when they debriefed, no  
25 one said these guys had the location histories to

1 tell people where they were and when. But if you  
2 look at Government's Exhibits 788 and 789, they are  
3 the histories for Joe Patrick Martinez and for David  
4 Calbert. And in this situation, you can see that  
5 before David Calbert went from the North to the  
6 South, you can see there's a transition here,  
7 February 13, 2014, he goes from the North to the  
8 South. There is an overlap here in time where Joe  
9 Patrick Martinez and David Calbert can actually be  
10 close to each other. Joe Patrick Martinez is in  
11 North 3B, and you see there's North 3A. So  
12 sometimes the same units will go to rec at the same  
13 time in the cages, and what David Calbert told you  
14 was, he was in a cage, Joe Patrick Martinez rolled  
15 up the paperwork and passed it through the cage.

16 And then from there, David Calbert goes to  
17 the North. He's in there from February 13, 2014, to  
18 March 7, 2014. Then you see when you line up David  
19 Calbert with Lupe Urquizo, right before Lupe Urquizo  
20 leaves from the South to Southern, here in Las  
21 Cruces, it looks like they're two doors down,  
22 housing unit S2A, J101S and J103S. So just in time,  
23 Lupe Urquizo gets the paperwork and he's on his way  
24 to Southern.

25 Once again, if you want corroboration of

1 witnesses and their testimony, you actually have a  
2 paper trail where this all occurred.

3 Speaking of corroboration, Defendants' EQ  
4 is the exhibit by the defense when they're asking  
5 Lupe Urquizo about conversations he had with Baca  
6 about basically various murders. What he told you  
7 is, "Baca was in Q pod. I was across from Q pod and  
8 there is a walkway right there. We talked in the  
9 cages before, and also we were in the same place in  
10 the summer, I think, of 2012, Q pod."

11 And I'm showing you now Government's  
12 Exhibits 748 and 747, where they are -- he said Pup  
13 was in housing unit North 3A, Q pod, and you can see  
14 where they're close. Housing unit 3B and housing  
15 unit 3B, W pod and X pod. So once again, you have  
16 corroboration by these witnesses.

17 This is Defendants' Exhibit EY. And this  
18 is important. As I told you earlier, the defense  
19 attorneys can ask questions any way they want. It's  
20 their case. They can do with it what they want.

21 Daniel Sanchez's attorney was questioning  
22 Mario Rodriguez and putting this time line together.  
23 If you remember, she did the same thing basically  
24 Rudy Perez' attorney did. When Mario Rodriguez  
25 would say, "Well, Dan and I did," they would say,

1 "No, no. I don't want to know what Dan did. I want  
2 to know what you did. I want to make you the focus  
3 of this deal."

4 And don't get me wrong. They can ask  
5 questions that way if they want to. But what  
6 happens here is, you don't get the whole story on  
7 this time line. Remember, Daniel Sanchez' attorney  
8 tried to lock him into where he was, when he was,  
9 when they were passing notes underneath the door, to  
10 see if this story worked out. And eventually the  
11 paperwork gets passed under the door. Most of the  
12 names you see on here are Lupe Urquizo and Mario  
13 Rodriguez. Very little mention of anyone else who  
14 is actually charged in this trial. You saw that  
15 there. You saw that with questioning by Rudy Perez'  
16 attorney, and then you actually saw it with Carlos  
17 Herrera's witness. I think it was Mr. Delgado. If  
18 you remember, he was in the pod, in yellow pod, when  
19 the murder went down. And he's a heroin user. He  
20 was on four medications. I think it's Bobby  
21 Delgado.

22 So they said, "Well, with Carlos Herrera,  
23 did you know he was involved with this thing at  
24 all?"

25 "No. He was my friend. We would drink

1 coffee in the upper tier. We would only -- we would  
2 just drink coffee up there, and it was only one tier  
3 at a time that could come out."

4 And what we learned was, ultimately Bobby  
5 Delgado said, "Well, I don't know everything because  
6 they didn't let me in on their business."

7 So you had a guy that was a friend of  
8 Carlos Herrera, came in to help him out and said,  
9 "Yeah, but SNM business, I was friends with some of  
10 those guys, but they didn't let me in on their  
11 business."

12 So Bobby Delgado didn't really help you  
13 out much.

14 The other thing about Bobby Delgado is, he  
15 actually got it wrong when it came to the tiers who  
16 was on the top tier or the bottom tier. At that  
17 time he said only one tier, either top or bottom,  
18 would come out. But if you look at the video,  
19 actually both tiers could come out at that time. So  
20 it was highly possible that Carlos Herrera could run  
21 downstairs and pass notes under the door.

22 So Bobby Delgado got that wrong, and we  
23 know it's wrong from looking at the video.

24 Another interesting thing about Bobby  
25 Delgado was, he told you he was a porter and at

1 night he would go out between about 9:00 or 10:00.  
2 So we know there were inmates that were out at night  
3 in the pods and they were typically the porters.  
4 And if you look at Jorge Borjas' notes, he was the  
5 guy who was up in the bubble and he would take notes  
6 when people would move, when they would have count,  
7 when they would eat chow, things of that nature.

8 He also told you that the porters were out  
9 in the pod between 9:00 and 10:00 at night. If you  
10 look at his records, there is no indication of  
11 porters being in the pod between 9:00 and 10:00 at  
12 night.

13 So they do a lot of good record-keeping,  
14 but Bobby Delgado and Borjas both have an issue with  
15 the records because we know people are out of the  
16 pods, but it's not documented in the records by  
17 either. To look at the records, it tells you when  
18 people move, when there was lockdown, and when there  
19 was count. But they don't have the porter shown,  
20 oddly enough.

21 So the next exhibit is Government's  
22 Exhibit 755, which is the rest of the story. Right?  
23 You can see where Ms. Armijo, once she questioned  
24 Mr. Rodriguez again, we had things added here, which  
25 is, first of all, they knew these guys were coming

1 because they looked at the white board, and the  
2 white board told him that people were coming,  
3 including Urquizo and Archie Varela, which is  
4 exciting for them because they figured when they  
5 were coming down, they were going to bring the  
6 paperwork. Because if you remember, Mario Rodriguez  
7 was going to bring the paperwork, but he didn't get  
8 it in time. So he went down to Southern without the  
9 paperwork, and there was an agreement that whoever  
10 came down would bring it. So they were expecting  
11 it.

12 The other thing that was left out was  
13 meeting at the door. Timothy Martinez and Mario  
14 Rodriguez. That's also corroborated by the  
15 testimony of either Jerry Armenta -- I think it's  
16 Jerry Armenta, who says he saw that -- he saw those  
17 two at the door, and then they're meeting at the  
18 door with Carlos Herrera. They called for him.  
19 Which is significant because he is the llavero of  
20 yellow pod and he is the one who should be  
21 overseeing this thing.

22 Once again, they're calling for Carlos  
23 Herrera down here on March 7. Mario Rodriguez once  
24 again speaks to Carlos Herrera about the paperwork.  
25 Carlos Herrera confirms that the paperwork is there.



1 And then Daniel Sanchez and Mario  
2 Rodriguez are reviewing the paperwork. It's Daniel  
3 Sanchez who says, "It's done." Mario barely got to  
4 finish reading that paperwork, and Daniel Sanchez  
5 had made the decision.

6 Now, remember, this story really only  
7 works with Daniel Sanchez inserted into this story.  
8 Because the defense wants to put this all on Mario  
9 Rodriguez, saying he's running the pod, he's making  
10 the decisions. Mario Rodriguez is just a good  
11 soldier. That's all he was at the time. He wasn't  
12 a shot-caller. Daniel Sanchez was. He was his  
13 right-hand man, but he wasn't the person to make the  
14 calls. And ultimately it's Daniel Sanchez who says  
15 it's done, and Daniel Sanchez is the one who picks  
16 the names to go on the suicide mission. They pass  
17 the paperwork back to Carlos Herrera, and Carlos at  
18 that time, as I told you earlier, says, "Just get it  
19 done."

20 For him there is an urgency, because, like  
21 I told you earlier, there is an issue with people  
22 talking in the pod and there is a concern that  
23 Javier Molina would get kited out of the pod.

24 Here's the part where Rudy Perez says,  
25 "I'm down for whatever as long as it's not me."

1           Pretty much that's what everybody says. I  
2 mean, the Jerrys said it in different words. They  
3 said, "It's either him or it's us."

4           And that was Rudy Perez' attitude, too.

5           Now, there is a question about -- remember  
6 the whole thing about whether Rudy was scared or  
7 not? Mario Rodriguez didn't have a conversation  
8 with Rudy Perez before the shanks were taken.

9 Daniel Sanchez was at Rudy Perez' door having a  
10 conversation with him. Daniel Sanchez calls Mario  
11 Rodriguez to the door. They open up the door, and  
12 all Daniel Sanchez says is, "Get that." And he  
13 points at the walker. Mario Rodriguez gets the  
14 walker, dismantles the piece, and takes it.

15           So there is never really an interaction.  
16 And the defense wants you to forget that. It wasn't  
17 Mario Rodriguez who was speaking to Rudy Perez. It  
18 was Daniel Sanchez.

19           And ultimately you know, though, that from  
20 the recordings what Rudy Perez says is, "I was  
21 sick." He wasn't feeling well that day, by his own  
22 admission in the recordings. He said he was coming  
23 out of either the hold or the hole, and it wasn't  
24 that he was scared; it's that he was sick. And  
25 you'll hear on the recordings several times where he

1 says, "Hey, if I can't put in work, this is my way  
2 to put in work."

3 And he told that to multiple witnesses in  
4 this case. "The shanks came from my walker. If I  
5 can't do it physically, this is my way of  
6 contributing to the S."

7 And that's what he did. Remember, not in  
8 a bragging manner.

9 Okay. In the phone yard Mario did stay  
10 behind to make shanks. Jerry Armenta told you the  
11 same thing. He said, "When we went out to the yard,  
12 noticed that Jerry -- that Mario didn't come out,  
13 and his cell was covered."

14 So once again, you have corroboration  
15 between witnesses on even minor details. Red comes  
16 back from the wheelchair program, was making shanks.  
17 You have three in the cell after 5:00 p.m.  
18 Remember, the 5:00 count ended. They finished  
19 eating, and then the Jerrys did what they did.

20 After it was done, Daniel Sanchez said at  
21 the door, "How do you like that baby?" And they got  
22 a response back from the other pod.

23 Remember, look at the rest of the story.  
24 The story actually doesn't make sense at all without  
25 Daniel Sanchez in there calling the shots, because

1 that's his job.

2           Going back to number 1 from the previous  
3 page, an addition was Mario Rodriguez tells Daniel  
4 Sanchez that the paperwork has arrived. They have a  
5 conversation, and that's where he says, "Me and you  
6 or what?"

7           Daniel Sanchez has other ideas other than  
8 participating. He also wanted Red to knock out  
9 Javier Molina. You remember Red eventually changed  
10 that to say, "I don't want to knock him out. I'm  
11 just going to choke him out."

12           And ultimately Dan says, "Don't forget the  
13 dope. Don't leave it. We'll go halfers."

14           Same thing here with Defendants' Exhibit  
15 FW-1. This is the exhibit that says over here on  
16 June 17, Rudy Perez was transferred and then after  
17 completing his sanction was not transferred back due  
18 to safety concerns.

19           We talked to Wendy Perez. We had her on  
20 the stand, right, and she said, "Well, there were  
21 safety concerns, but it was related to his health.  
22 Up in the North he was in a room that had a shower  
23 that comes out of the door since he was  
24 wheelchair-bound for part of that time. And so when  
25 we transfer people, we make sure there are not other

1 safety issues like that."

2 So with this exhibit here, once again, you  
3 only get part of the story.

4 Okay. I'm probably running a little low  
5 on time. I'm showing you Government's Exhibit 11.  
6 This is the one that's channel 5. It's one of the  
7 views, at the 17:20:33 mark. This is significant  
8 because if you look at the video, this snapshot in  
9 time tells you a lot. And actually, before and  
10 after this, you'll see how people meet when they  
11 said, "I was meeting to tell Blue about the change  
12 in the plan, what the Jerrys were doing."

13 And ultimately this snapshot in time,  
14 Daniel Sanchez is looking directly at Javier  
15 Molina's cell. And what reason would Daniel Sanchez  
16 have to be looking at that cell if he didn't know  
17 what was going on there or he didn't expect  
18 something to happen? He's checking on everybody  
19 with his arms crossed. Remember, sitting next to  
20 him is his brother, Ronald Sanchez. Ronald Sanchez  
21 is the person who asked to meet with the FBI, with  
22 Mario Rodriguez. And Ronald Sanchez is the one who  
23 says, "What kind of deal can my brother get?"

24 Ronald Sanchez is sitting right next to  
25 his brother, who is looking up at the cell when

1 Javier Molina is being murdered. What does Ronald  
2 Sanchez know that he thinks he needs to try to get a  
3 deal for his brother? Clearly he has concerns about  
4 his brother's guilt. Otherwise, he wouldn't be  
5 trying to help him out.

6 So keep that in mind. I'm sure the  
7 defense wanted to bring out Ronald Sanchez because  
8 they wanted to let you know that Mario Rodriguez was  
9 trying to score points by getting more people to  
10 come to the table. Not necessarily his meeting; he  
11 was there to help. But Ronald Sanchez was also  
12 there to help his brother. So think about that.  
13 Two brothers right next to each other when a murder  
14 is going down. Family talks. You can take it from  
15 there.

16 MS. JACKS: Your Honor, I object to this  
17 argument as misconduct. He's arguing beyond the  
18 evidence and asking the jury to make inferences  
19 about what Ronald Sanchez would say when he hasn't  
20 been called as a witness in this trial.

21 THE COURT: Well, I think it's a limited  
22 inference that he's drawing. Overruled.

23 MR. CASTELLANO: You get the picture,  
24 ladies and gentlemen. What can I do to help my  
25 brother? Maybe Blue could get points for that or

1 not, but certainly someone else was looking out for  
2 points for his brother.

3 I've been told I'm running out of time.  
4 So what I'm going to do with my remaining time --  
5 and maybe sneak a little extra -- is this. I told  
6 you I would try to show you a road map of some of  
7 these recordings. So remember, you're not going to  
8 get a transcript. You're only going to get the  
9 audio recordings, so I'm going to try to point you  
10 to the transcript as best I can.

11 Government's Exhibit 356, at the very  
12 beginning of that recording, is the one where Crazo,  
13 Eric Duran, and Pup and Mario Rodriguez -- Mario  
14 Montoya are speaking, and they say that "Santistevan  
15 and Adam Vigil are giving us desmadre." And at that  
16 point they say, "We need someone on the streets.  
17 We'll give you some artillery if you need it, and  
18 any money."

19 And Mario Montoya says, "What about  
20 information? Can you give me some information?"

21 So this is the beginning of the  
22 discussions of killing Santistevan and Adam Vigil.  
23 Adam Vigil isn't charged as a victim in this case  
24 because in his case they never got past the  
25 cooperators. There is only talk of killing Adam

1 Vigil with Eric Duran and Mario Montoya. So if  
2 you're wondering, why wasn't Adam Vigil charged even  
3 though Mr. Baca wanted to kill him, it's because we  
4 didn't get past the cooperators, but we did for  
5 Santistevan, we have letters to that effect; and  
6 Marcantel, because we have Chris Garcia and Mandel  
7 Parker.

8 Okay. At the end, before the end of this  
9 recording, this is where the statement says, "They  
10 just brought Pup back last week."

11 So we know close in time, maybe one week,  
12 maybe it's two, one or two weeks, Pup is ready to  
13 kill people.

14 Government's Exhibit 380 I believe is one  
15 where they mention Barney Rubble instead of Adam  
16 Vigil. Remember, that's what people called him, was  
17 Barney Rubble. And ultimately, a few pages in, the  
18 equivalent of a few pages in, they say, "That  
19 fucker, he knows what's going on when he's fucking  
20 crossing everybody like that. So that's the reason  
21 why. Either one. That one, Barney?"

22 And Montoya says, "Yeah," and Pup says,  
23 "Or the other one."

24 Then there is discussion of -- Pup says,  
25 "Either one of those, the top one. All right. The



1 one or the Barney Rubble?"

2 Pup once again says, "Either one."

3 Montoya says, "I think the higher-up one  
4 is better."

5 So Mario Montoya posing as what you would  
6 think as a good SNMer would do says, "Why don't you  
7 go all the way to the top?" If you're going to  
8 commit to this, go all the way to the top.

9 There is an instruction here in the  
10 instructions alleging entrapment, and that relates  
11 to Marcantel, and so the allegation is that the  
12 cooperators overly suggested to Mr. Baca that he get  
13 on board with this conspiracy to murder Marcantel.  
14 If you look closely at the evidence and the history  
15 going back to Roy Martinez and Robert Martinez,  
16 you'll see there is not evidence of them inducing  
17 him, because Baca was already a ready, willing, and  
18 able participant in the murder of high-ranking  
19 officials.

20 So look closely at that instruction and  
21 you'll see that it doesn't apply, but it is  
22 something you're supposed to consider.

23 Exhibit 394. It's at the 31-to-33-minute  
24 mark of that exhibit. Garcia says, "They want  
25 Santistevan," and Mario Montoya says, "Yeah."

1 Garcia says, "It's going to have to fall  
2 to the main dude of the fucking penitentiary shit."

3 Right before that, he had said, "I told  
4 him it couldn't just be Santistevan. His name is on  
5 the report. I told him the one who has higher power  
6 to do that is Marcantel."

7 So it's actually Chris Garcia mentioning  
8 that Marcantel is high enough to be creating  
9 problems for Mr. Baca. And then he says, "It has to  
10 be the main dude," Garcia does, and Mario Montoya  
11 says, "That's what I told him. I told him, if  
12 you're going to do something, then make it worth  
13 your while, dog. These guys can't -- they're  
14 nobody. You know what I mean?"

15 And he says, "Yeah." The cooperator says,  
16 "Barney Rubble is pissant." In other words, Barney  
17 Rubble is not high enough to do this. If you're  
18 going to do this, go all the way. And apparently  
19 Garcia has already had some discussion there with  
20 Pup.

21 Okay. Exhibit 396 is the day that Mario  
22 Montoya picks up the gun from Christopher Garcia.  
23 There is specific discussion of Marcantel on here.  
24 They say he's a big dude, he's a sheriff, and in  
25 this particular recording, Montoya, Mario Montoya,

1 says, "If Chuco doesn't do it, I'm going to put --  
2 I'm going to get him -- take him -- that they're  
3 willing to throw him off a little bit, give him a  
4 double reactor, you know what I mean?"

5 And Garcia says, "For killing  
6 Santistevan?"

7 So this is the talk where they're saying  
8 if Mandel Parker doesn't come through, we're going  
9 to kill him and we're going to leave everything on  
10 him. And Christopher Garcia is perfectly happy  
11 about that.

12 This is one where Christopher Garcia talks  
13 about getting hair from the barber shop and planting  
14 it on him. He's clearly on board at this point, by  
15 November 29 of 2015, with killing Marcantel because  
16 he provides a gun for that to happen.

17 I'm not going to give you any markers for  
18 Rudy Perez' recordings. I invite you to listen to  
19 all of them. The longest is maybe 30 minutes. But  
20 you're going to hear the same thing about his  
21 participation. It's clearly going to be more than  
22 just bragging, and if he's not bragging, then  
23 clearly he was involved with the murder and clearly  
24 he agreed to provide his shanks -- or his walker to  
25 be made into shanks.

1 In terms of the Carlos Herrera recordings,  
2 Exhibit 192 beginning at 17:05 of the first clip or  
3 of that audio talks about Earn Dog wanting to get  
4 out and Carlos Herrera being disappointed with him.

5 At the 9:11 mark of Exhibit 192, there is  
6 talk about Javier Molina and criticism on how it  
7 wasn't done correctly. So what was happening is:  
8 People were criticizing Carlos Herrera and others  
9 because it was such a mess. But he said, "Hey,  
10 don't complain that it wasn't done correctly. I got  
11 it done."

12 In the 21:26 minute mark to 33:48, Billy  
13 Cordova starts by saying, "Well, that's what they  
14 were saying about Javie, the papels were down there  
15 for a long time." He also said, "Javier was down  
16 there for four years."

17 And Herrera once again mentions how people  
18 are being negative because it wasn't done correctly.  
19 Well, that means it was done and he approved it. It  
20 just wasn't done correctly according to some people.

21 Herrera also mentions that no one ever  
22 confronted Molina about the paper. It says, "When  
23 they were here with him before, no one ever went and  
24 told him anything."

25 At the 34:58 minute mark they talk about

1 Javier having clavo, or drugs, and being right there  
2 in the pod. So in other words, Rudy Perez in his  
3 recording says he was on a payment plan, he was  
4 buying his way to buy time. So they were extorting  
5 him for money and not killing him in green pod.

6 At the 37:44 minute mark to 39:57, Billy  
7 Cordova asks, "The paperwork was real, huh?"

8 And Carlos responds, "Yeah. They were  
9 just mad. They were angry."

10 Once again, it happened there was  
11 paperwork; people just didn't like the way it  
12 happened. And that was Carlos Herrera's own words.

13 Exhibit 194, the two-minute mark for about  
14 14 minutes, Billy tells Carlos he defended him  
15 because there was a rat for four years, referring to  
16 Molina, and saying, "And you're trying to say the  
17 carnal's in the wrong?" They were criticizing him.  
18 And he tells him, "I'm defending you, Herrera. I'm  
19 defending you, Lazy."

20 And he says, "Yeah," and talks more about  
21 people who were criticizing the decision.

22 Also in that same clip, he talks about how  
23 he also ordered the beating of Julian Romero and he  
24 said, "We told Conrad to handle it. Reglas are  
25 reglas. Rules are rules."

1           Turning to the recordings on Eric Duran's  
2 recordings, I believe it's Exhibit 390. It's a  
3 short clip. If you begin at 1 minute 20 seconds  
4 approximately, there is a discussion about hitting  
5 Armenta's family. And that's Anthony Baca on the  
6 recording.

7           Exhibit 296, about the 1:15 minute mark  
8 Pup is talking about Santistevan and the hit.

9           Exhibit 308 at the 37 second mark,  
10 basically the beginning, Pup talks about money for  
11 the hit, talks about hits on rival gangs, on rivals,  
12 and Baby G hitting Petey at Pup's request, who is a  
13 Sureno.

14           Exhibit 420 around the 22-minute mark,  
15 22:56, Pup tells Chris to give Mario Montoya only  
16 one gun.

17           And Exhibit 416 at the one minute 19  
18 second mark, there is discussion about Chris hiding  
19 the gun.

20           Exhibit 328, about the two minute 53  
21 second mark, there is talk about locating targets  
22 for the murder. So in other words, they talk about  
23 going to banquets and social events and places where  
24 they can find Gregg Marcantel and others.

25           Exhibits 330 and 334 are close together

1 and there is discussion about where Gregg Marcantel  
2 lives and where his house is located.

3 Exhibit 418, around the 43 second mark for  
4 starters, this is at the beginning. This is a  
5 59-minute clip, the whole thing is. Chris Garcia  
6 informs Pup that the gun is picked up. This is  
7 after the time that he's provided the gun to -- for  
8 the Marcantel murder, once again showing his  
9 agreement.

10 Exhibit 348 about the 4:36 minute mark,  
11 Pup admits he's over Styx. In the second clip,  
12 which was at the 13:56 mark, he notes they're going  
13 to get notoriety over killing Gregg Marcantel.

14 At the 17:57 mark, he talks about watching  
15 news for the murder. So if you recall, he was  
16 saying he barely slept, he was excited to see the  
17 news, he hoped to wake up the next morning to find  
18 Marcantel dead. And that's captured here.

19 The fifth clip that was played at the  
20 23-minute, they talked about it being a federal case  
21 now that's going to give them more power, and they  
22 talk about killing Armenta and his family. His  
23 family gets hit. And once that happens, no one is  
24 going to want to testify.

25 In terms of the organization, Exhibit 368,

1 this is where Mr. Baca talks about the rayos, or the  
2 rays, and the structure of the organization. That's  
3 something that Mario Rodriguez told you about.

4 I'm just about out of time. Think about  
5 the cooperators. Think about why they cooperate.  
6 Think about the consequences of their cooperation.  
7 You heard about David Calbert and Lupe Urquizo  
8 having a short meeting the day that Lupe Urquizo was  
9 debriefing at the FBI, and Calbert was coming in for  
10 the first time making a final decision about what he  
11 wanted to do. And it was a five-minute decision, a  
12 five-minute meeting. Their lawyers were there.

13 The defense wants you to believe they got  
14 there in a short amount of time and got their  
15 stories together. Once again, look at the  
16 corroboration, look at the records, and listen to  
17 what they said.

18 You know, the defense tried to impeach  
19 these guys with their prior convictions. But  
20 frankly, you cannot attack an SNM Gang member's  
21 credibility based on crimes of violence. That's  
22 kind of what you expect from them and their  
23 histories. So remember, if they committed the  
24 crime, if they hurt somebody, did they do it for the  
25 S? If they did, then they did it because it's



1 expected of them. So just keep that in mind.

2 That's what the rules call for, and that's why  
3 Javier Molina was killed.

4 So when we finish presenting this case to  
5 you, consider these things. Consider about why  
6 people did what they did. Consider the  
7 consequences. Consider the fact that no  
8 cooperator -- cooperators got hit hard by us before  
9 they got hit hard by the defense. They had to be  
10 held accountable for what they did. They lost good  
11 time. They lost benefits. Some of them may be  
12 seeking witness protection as a result of their  
13 testimony and their cooperation, and that means  
14 something.

15 So when it goes back to Calbert and  
16 Urquizo, remember, this wasn't just good old boys  
17 saying, "Hey, let's go to court and testify." Each  
18 of them made a conscience decision to turn their  
19 backs on the gang and face the consequences from the  
20 gang. So just keep that in mind.

21 We're going to ask you to find each of  
22 these men here guilty of the crimes of conspiring to  
23 murder Javier Molina, of murdering him, and of  
24 conspiring to murder Gregg Marcantel and Dwayne  
25 Santistevan.

1 Thank you for your time, ladies and  
2 gentlemen.

3 THE COURT: Thank you, Mr. Castellano.  
4 Let me see counsel up here at the bench.

5 (The following proceedings were held at  
6 the bench.)

7 THE COURT: What would you prefer? Would  
8 you prefer to take a 15-minute break, let the jury  
9 rest, come back and do your closing, or send them to  
10 lunch at this time? Or would you prefer me to ask  
11 them what they want?

12 MS. DUNCAN: I would prefer that we have  
13 lunch first and then respond.

14 THE COURT: Okay. Why don't I send them  
15 to lunch and bring them back at 12:45. All right.

16 (The following proceedings were held in  
17 open court.)

18 THE COURT: All right. I think we're  
19 going to take our lunch break at this point, then  
20 we'll have an afternoon of the closings by the  
21 defendants.

22 So since we're taking a break, let me  
23 remind you of a few things that are especially  
24 important.

25 Until the trial is completed, you're not

1 to discuss the case with anyone, whether it's  
2 members of your family, people involved in the  
3 trial, or anyone else. That includes your fellow  
4 jurors. So don't talk about this case yet.

5 If anyone approaches you and tries to  
6 discuss the trial with you, please let me know about  
7 it immediately. Also, you must not read or listen  
8 to any news reports of the trial, and don't get on  
9 the internet and do any research for the purposes of  
10 this case.

11 And finally, remember you must not talk  
12 about anything with any person who is involved in  
13 the trial, even if it doesn't have anything to do  
14 with the trial.

15 If you need to speak with me, give a note  
16 to one of the court security officers or Ms.  
17 Standridge. Again, you're just going to have to  
18 live with me saying these, but we've got to bring  
19 this thing in to a successful conclusion, so let's  
20 all work hard on them, so be patient with me as I  
21 give you these throughout the day.

22 I'll see you about 12:45, then we'll  
23 resume closings, and we're going to start with Mr.  
24 Baca's counsel this afternoon. All right. We'll  
25 see you at 12:45.

1 (The jury left the courtroom.)

2 THE COURT: All right. The motion, the  
3 memorandum opinion I was talking about that's on  
4 CM/ECF is document 1869.

5 All right. See you in about an hour.  
6 Have a good lunch.

7 (The Court stood in recess).

8 THE COURT: All right. We'll go on the  
9 record.

10 Ms. Duncan, are you going to go about an  
11 hour and a half? Is that what your plans are?

12 MS. DUNCAN: I think so. I may end up  
13 going a little bit shorter, because I talk so fast.  
14 But I'm going to try hard to slow down. Just throw  
15 things at me if I don't.

16 THE COURT: So we'll plan on taking a  
17 break after Ms. Duncan is done, and then that will  
18 give us an opportunity for y'all to tell me where  
19 we're going next.

20 Anything we need to discuss before we  
21 bring the jury in? Mr. Castellano, Ms. Armijo?

22 MS. ARMIJO: No, Your Honor.

23 THE COURT: How about from any of the  
24 other defendants? Anybody got anything to discuss?  
25 All rise.

1 (The jury entered the courtroom.)

2 THE COURT: All right. Ms. Duncan, do you  
3 have a closing argument on behalf of Mr. Baca?

4 MS. DUNCAN: I do, Your Honor. Thank you  
5 very much. May it please the Court.

6 THE COURT: Ms. Duncan.

7 MS. DUNCAN: Anthony Ray Baca is not  
8 guilty. He's not guilty of conspiring to kill  
9 Javier Molina, he's not guilty of murdering Javier  
10 Molina, and he's not guilty of conspiring to murder  
11 Gregg Marcantel. He's not guilty of conspiring to  
12 murder Javier Molina or murdering Javier Molina  
13 because he had nothing to do with either of those  
14 crimes. And although he did eventually agree with  
15 others to kill Gregg Marcantel, he only did so after  
16 being induced or persuaded to do that by government  
17 witness Eric Duran. And as we'll talk about later  
18 in my argument, that means he's not guilty of that  
19 offense as well.

20 I'd like to talk to you first about the  
21 Javier Molina charges. And before I do that, on  
22 behalf of Mr. Baca, Mr. Lowry, and the rest of Mr.  
23 Baca's defense team, I want to thank you for your  
24 attention in this case. This has been a long case  
25 and difficult evidence, and we've all noted how much

1 you've paid attention, taken notes of testimony.  
2 Even when it was kind of boring, you've still paid  
3 attention. We recognize the sacrifice that you've  
4 all made in your regular lives to be here, and we  
5 really appreciate it.

6 So starting with Javier Molina, Mr. Baca  
7 did not conspire to murder Javier Molina, and jury  
8 instruction number 35 sets out the elements of that  
9 offense. And as you see, in order for the  
10 Government to convince you beyond a reasonable  
11 doubt, they have to prove beyond a reasonable doubt  
12 that Mr. Baca and another person, by words or acts,  
13 agreed together to commit the murder and Mr. Baca  
14 and the other person intended to commit the murder  
15 and this happened in New Mexico on or about March of  
16 2014.

17 And there's a part of this instruction  
18 that's important for you to keep in mind, and that  
19 is that evidence of a defendant's membership in a  
20 gang by itself is insufficient to establish that  
21 person's guilt of a crime as a co-conspirator. So  
22 in other words, you've heard a lot of evidence that  
23 Mr. Baca is a member of the SNM, and we've never  
24 contested that he is. But his membership in the SNM  
25 does not make him guilty of any crime.

1 Mr. Baca also did not murder Javier Molina  
2 and the instruction you have to pay attention to in  
3 deciding this is jury instruction number 29. And to  
4 find Mr. Baca guilty beyond a reasonable doubt, you  
5 would have to find that someone else committed the  
6 charged crime, which has been proven. Jerry  
7 Armenta, Jerry Montoya, Mario Rodriguez, and Timothy  
8 Martinez brutally murdered Javier Molina in March of  
9 2014.

10 But what the Government has not proven is  
11 that Mr. Baca intentionally associated himself in  
12 some way with the crime and intentionally  
13 participated in it as he would in something he  
14 wished to bring about. And again, the evidence that  
15 Mr. Baca is a member of the SNM does not make him  
16 guilty of this offense. The Government was required  
17 to present you with evidence of that fact and has  
18 failed to do so.

19 The Government has offered you five types  
20 of evidence in this case: Video recordings; for  
21 example, video recording of the Javier Molina  
22 murder. Physical evidence, such as the shanks, the  
23 gun. Documentary evidence: Housing records,  
24 letters written by people including a letter by Mr.  
25 Baca. Audio recordings of Mr. Baca's statements are

1 the only audio recordings of the defendant's  
2 statements you can consider against Mr. Baca. You  
3 can't consider those of Mr. Herrera or Mr. Perez.

4 And then the testimony of the Government  
5 witnesses.

6 And when you look at these categories,  
7 you'll see that only one -- they've offered you only  
8 one category of evidence in their effort to try to  
9 prove that Mr. Baca murdered Javier Molina or  
10 conspired. Because there was no video evidence.  
11 You saw the video of the Javier Molina killing. Mr.  
12 Baca was not even in Southern New Mexico  
13 Correctional Facility at that time. There was no  
14 video evidence that links him to those offenses.

15 There is no physical evidence. We saw the  
16 shanks, we saw some of the evidence related to Mr.  
17 Molina himself. None of that links Mr. Baca to the  
18 murder.

19 You also saw documentary evidence. Well,  
20 actually, you didn't see documentary evidence. You  
21 heard a lot about this paperwork that was allegedly  
22 brought down to Southern New Mexico Correctional  
23 Facility to authorize the green light of Javier  
24 Molina. But you never actually saw the paperwork.  
25 Instead, you have to rely on the Government



1 witnesses' testimony about it, and that testimony  
2 was incredibly contradictory. We have at least  
3 three versions of what the paperwork even was.  
4 There was a one-to-two-page police report. It was a  
5 warrant application. It was a transcript of an  
6 interview. It was one page, it was two pages, it  
7 was 20 pages. All of these contradictory stories.  
8 But the bottom line is: The Government never  
9 produced for you this mystery paperwork.

10           They did introduce audio recordings of Mr.  
11 Baca. And Mr. Castellano at the end of his argument  
12 pointed out some of those recordings to you. But  
13 when he talked to you about those recordings, you  
14 know, he never pointed out a recording which Mr.  
15 Baca talks about murdering Javier Molina or  
16 authorizing that hit. And that's because he  
17 doesn't.

18           And the fact that there is no recording of  
19 that is significant because one of the two jobs that  
20 Eric Duran was given by the Government was to get  
21 Mr. Baca to confess to Molina and to involve him in  
22 the conspiracy to murder Gregg Marcantel and others.  
23 And despite Eric Duran's best efforts, there are no  
24 statements on those recordings of Mr. Baca. And you  
25 hear him talk about a bunch of other things. You

1 hear him talk about Marcantel, you hear him talk  
2 about Mr. Santistevan. You heard him talk about  
3 other crimes within the gang, but never Mr. Molina.  
4 And that's because Mr. Baca did not commit those  
5 offenses.

6 So what the Government really is relying  
7 on is Government witnesses. Those men, especially  
8 the four murderers who are trying to buy their way  
9 into a lesser sentence and other cooperating  
10 witnesses who got benefits, and all of whom had real  
11 motives to lie, particularly to lie about Mr. Baca,  
12 because they recognized that Mr. Baca was a big fish  
13 for the Government and that testifying about him,  
14 giving the Government a piece in that puzzle, would  
15 give them a good benefit, whether it be a sentence  
16 or in terms of money. And we'll talk more  
17 specifically about those witnesses as we go along.

18 The one thing I actually wanted to touch  
19 on is the audio recordings of Mr. Baca's statements.  
20 You did hear that Mr. Baca talked to Mr. Duran about  
21 threatening Jerry Armenta's family. And he did do  
22 that. He's not on trial for that. And the threats  
23 against Mr. Armenta's family were not about Anthony  
24 Baca. Mr. Armenta had never met Anthony Baca. Mr.  
25 Armenta could not link Mr. Baca to -- Mr. Armenta

1 could not link Mr. Baca to anything. By trying to  
2 discourage Jerry Armenta from testifying, he was  
3 trying to protect the brotherhood, his other -- his  
4 comembers of the SNM. So was that wrong?  
5 Absolutely. He shouldn't have done it. But it does  
6 not make him guilty of the Javier Molina homicide.  
7 Jerry Armenta was not a threat. There was nothing  
8 he could say -- and had Mr. Armenta come in here and  
9 said, "Oh, yes," as so many did, "I had a  
10 conversation with Mr. Baca about Javier Molina," we  
11 would have been able to prove it a lie because the  
12 housing records would have shown those two men were  
13 never together.

14 So the Government's case really rests on  
15 these nine Government witnesses. And I know that  
16 there were more. I'm not going to talk about  
17 everyone, because I don't have all day to talk to  
18 you, so I'm going to focus on these nine men.

19 And Mr. Castellano in his closing argument  
20 talked to you about how these men were not the same  
21 men that they were when they committed the offenses  
22 that they discussed with you both on direct and on  
23 cross-examination. And you all have heard that's  
24 just not true. These men continued to commit crimes  
25 from the time before they joined the Government all

1 the way during their incarceration up until the  
2 moment that they took that stand. These witnesses  
3 are out for themselves. They will do what they need  
4 to do to get a benefit for themselves, to better  
5 their own situation, and they're just not credible.  
6 And every single one of them had a motive to lie.

7 So I'd like to talk to you a little bit  
8 about the jury instructions that the Court has given  
9 you on how do you evaluate these Government  
10 witnesses?

11 And the jury instruction is number 7.  
12 It's a very important one, and I ask you to spend  
13 some time reading it, talking about it,  
14 understanding it.

15 What that instruction tells you is that an  
16 important part of your job as a juror will be making  
17 judgments about the testimony of the witnesses who  
18 testified in this case. And you should think about  
19 the testimony of each witness you have heard and  
20 decide whether you believe all or any part or even  
21 no part of what each witness had to say and how  
22 important that testimony was. And given all that  
23 you heard on cross-examination, all the problems  
24 with these witnesses' testimony, I think when you  
25 ask yourself these questions, you will have to

1 disregard the Government's witnesses.

2           So you'll see in instruction number 7  
3 there are a lot of questions. I'd like to focus you  
4 on two categories of questions that I think are  
5 particularly relevant in evaluating the witnesses in  
6 this case. The first: Did the witness have any  
7 particular reason not to tell the truth? So a  
8 motive to lie. And the Court in jury instruction  
9 number 7 offers you some other questions to sort of  
10 flesh that out. One, did the witness have a  
11 personal interest in the outcome in this case? Did  
12 the witness have any relationship with the  
13 Government or a defendant?

14           I suggest a couple other questions that  
15 are related to these. These aren't in the  
16 instruction; these are just questions that I suggest  
17 to you. What did the witness gain by testifying for  
18 the Government? What does the witness expect in  
19 exchange for testifying for the Government?

20           And for each of those Government  
21 witnesses, the relationship they have is with the  
22 Government, and what they expect to gain is a  
23 reduced sentence, or if they're already serving a  
24 state sentence and they haven't entered a plea in  
25 this case, to have someone from the prosecution

1 table testify at the parole hearing or help them  
2 with a clemency petition, giving them money, helping  
3 them to find a house. They stand to gain a lot by  
4 being on the Government's side, by testifying for  
5 the Government, and by helping the Government secure  
6 verdicts against Mr. Baca and others. And you  
7 should keep these all in mind as you consider the  
8 testimony that they gave.

9 Did the witness impress you as honest?  
10 Did the witness admit prior instances of  
11 untruthfulness? And I think for almost all if not  
12 all of the Government witnesses, at some point they  
13 had to admit to you that they had been untruthful in  
14 the past in this case.

15 Did the witness testify falsely at trial  
16 or on prior occasions? At least two witnesses had  
17 to admit that they had testified falsely on prior  
18 occasions: Eric Duran and Billy Cordova.

19 Did the witness make prior statements that  
20 were inconsistent with his or her testimony?  
21 Absolutely. On almost every cross-examination by  
22 the defense in this case, bringing out statements  
23 that these witnesses had made to law enforcement  
24 that were different than what they told you. And  
25 you heard over and over again that Agent Acee or

1 Agent Stemo were just wrong; they had written it  
2 down wrong.

3 Did the witness collude with others to  
4 create false evidence on prior occasions? We're  
5 going to talk in detail about the four murderers you  
6 know colluded together to create that false evidence  
7 in state court, but there were others who have  
8 colluded to create false evidence in this case.

9 And did the witness have an opportunity to  
10 collude with others prior to their testimony? In  
11 this case, you have heard ample evidence that they  
12 absolutely did. The cooperating witnesses were  
13 housed together from before the time that this case  
14 was charged to the time that they sat in that  
15 witness chair. You heard that they were together in  
16 PNM level 6, the North facility. That was at the  
17 point at which they were all together, they got the  
18 contact visits, and you saw the videos of them  
19 violating the contact visits.

20 You heard that the defendants were  
21 together who had the discovery tablets. One of them  
22 managed to break it to get to the internet and  
23 shared it with the rest of the cooperators.

24 You heard about the witnesses being  
25 together at Otero County, and you heard about them

1 being together at Lea County Detention Facility most  
2 recently, and some of the offenses that particularly  
3 Jerry Montoya committed while he was incarcerated  
4 there.

5 Mr. Castellano asked you in evaluating the  
6 credibility of the witnesses' stories to consider  
7 them independently. Were these witnesses coming  
8 before you independently, telling you the same  
9 thing? And I submit to you there is no  
10 independently in this case, because these witnesses  
11 have been together so much, and because so many of  
12 them have had access to that tablet that you saw  
13 with all of the discovery in this case, which not  
14 only had other witnesses' statements, but it also  
15 had pictures of the physical evidence, pictures of  
16 the documentary evidence, pictures of the video  
17 evidence, which let those witnesses know not only  
18 what evidence is out there, but also what evidence  
19 isn't.

20 So what can I say that the defense can't  
21 rebut, because there is nothing to rebut out there.  
22 For example, I would offer conversations in the rec  
23 yard. They knew they weren't recorded, they knew  
24 there were no documents to disprove it, so that was  
25 a safe place to claim that one of the defendants or



1 Mr. Baca had spontaneously confessed.

2 And you know, Mr. Castellano talked about  
3 the moment where the Government put David Calbert  
4 and Lupe Urquizo together alone in a room with their  
5 lawyers, as if that was something innocent and you  
6 shouldn't consider. And one thing I want you to  
7 think about when you're considering that meeting is  
8 that David Calbert and Lupe Urquizo -- their stories  
9 needed to match for the Government's story to even  
10 make sense. This wasn't putting together one  
11 witness from Southern New Mexico Correctional  
12 Facility with Mr. Calbert, who was at PNM South.  
13 This was putting together two witnesses who the  
14 Government wanted to convince you had actually  
15 handed off the paperwork that came down to Southern  
16 that would authorize the murder of Javier Molina.

17 So there was a purpose to that meeting,  
18 and David Calbert told you that Mr. Urquizo did, in  
19 fact, tell him what he had told law enforcement, and  
20 that was a moment for them to get their stories  
21 together so that their testimony would be most  
22 valuable to the Government and they would get the  
23 most bang for their buck in testifying for the  
24 Government.

25 And finally, sort of the bottom of jury

1 instruction number 7, it instructs you, "In reaching  
2 a conclusion on a particular point or ultimately in  
3 reaching verdicts in this case, do not make  
4 decisions simply because there were more witnesses  
5 on one side than the other. What is important is  
6 how believable a witness was and how much weight you  
7 think that their testimony deserves."

8 And what's important about this  
9 instruction is: There were a lot of Government  
10 witnesses. Some of their stories match for the  
11 reasons I've just said. But a lie being told by  
12 five witnesses is as much of a lie as if told by  
13 one. A lie being told by nine witnesses is still a  
14 lie.

15 So if you have not credible witnesses  
16 coming in and telling you the same story after  
17 having had an opportunity to get their stories to  
18 match, you shouldn't believe any of them. You need  
19 to evaluate each of these witnesses individually,  
20 and if you find them not credible -- I trust that  
21 you will -- put them to the side.

22 What evidence is there independently of  
23 these Government witnesses that corroborates their  
24 story? And with respect to the allegation that Mr.  
25 Baca played any role in the murder of Javier Molina,

1 there is absolutely none.

2 And then the last instruction that I'd  
3 like to talk to you about before getting into some  
4 of the individual Government witnesses is jury  
5 instruction number 12. And this is the instruction  
6 about informants and accomplices. And what I'd like  
7 to draw your attention to is the caution that you  
8 must examine and weigh an informant's and an  
9 accomplice's testimony with greater care than the  
10 testimony of an ordinary witness. You must  
11 determine whether the informant's testimony has been  
12 affected by self-interests, which, for the  
13 informants in this case, it absolutely has, by an  
14 agreement the witness has with the Government which,  
15 for the informants in this case, they absolutely do.  
16 By the witness's own interest in the outcome of the  
17 case, which they all have that interest to get the  
18 maximum benefit for themselves, or by prejudice  
19 against any defendant.

20 And you heard from some of the Government  
21 witnesses that they are prejudiced against Mr. Baca.  
22 They didn't like his ideas for the SNM, they didn't  
23 like him, and they had a motive to fabricate  
24 evidence against him to try to convict him of crimes  
25 he did not commit.

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1           So going now to some of the individual  
2 Government witnesses. Let's start with Jerry  
3 Armenta, also known as Creeper. As I said before,  
4 Jerry Armenta doesn't really give you anything about  
5 Mr. Baca in this case. And I point him out because  
6 he's kind of at a key point in the case. He's one  
7 of the four people who collude together to come up  
8 with a false story in the state case to try to get  
9 Jerry Montoya acquitted of murder. Then he's placed  
10 next to Government cooperating witness Eric Duran,  
11 and Eric Duran convinces him, "You don't want to --  
12 don't do it for them. Do it for you."

13           So he comes up with a new story and a new  
14 plan to help himself, and that plan was to cooperate  
15 with the Government and you heard from the state  
16 case that instead of facing life, he thought was  
17 going to get 18 months, and now, by testifying here,  
18 he's expecting a similar benefit from the  
19 Government.

20           And the collusion that Jerry Armenta,  
21 Jerry Montoya and Mario Rodriguez and Timothy  
22 Martinez did in the state system was really  
23 substantial. This wasn't a bunch of guys just  
24 getting together and saying, "Hey, let's make up a  
25 story, whatever." I mean, they wrote statements

1 that they purported to sign under penalty of  
2 perjury, so that a court and other people would take  
3 it seriously. They said, "This is true. This is  
4 not only true; this is really, really true, because  
5 I'm swearing to it under penalty of perjury."

6 And Jerry Armenta admitted on  
7 cross-examination that they worked together to think  
8 about, How can we make our story credible? So they  
9 came up with that story about if Jerry Armenta had  
10 stabbed Javier Molina because Javier Molina  
11 disrespected his daughter. And Jerry Armenta said,  
12 "Well, I figured other people would corroborate that  
13 because Javier Molina was known for insulting  
14 people, for trying to get rises out of people, and  
15 so there would be other witnesses who would say that  
16 that was credible."

17 And so you saw this. This is the  
18 statement that Ms. Jacks went through with  
19 Mr. Armenta, the statement he wrote for Jerry  
20 Montoya while he tells the story about getting into  
21 a personal beef with Javier Molina over his  
22 daughter.

23 Then he meets with Eric Duran, and after  
24 talking to Eric Duran, he changes his story,  
25 ultimately deciding to be a Government witness, and

1 then he writes the letter that you heard to Jerry  
2 Montoya.

3 Mr. Castellano kind of poo-pooed this  
4 letter because it never made it to Jerry Montoya.  
5 But that really doesn't matter, because ultimately  
6 Jerry Montoya and Jerry Armenta were together and  
7 they could get their stories straight for you before  
8 they testified.

9 And it's not a coincidence that Jerry  
10 Armenta in this letter talks about Jerry Montoya  
11 putting his hands up when Mario Rodriguez walks in  
12 the room. Jerry Armenta is telling Jerry Montoya,  
13 "Here's what you need to say for our stories to  
14 match. This is how I'm going to get out of it. I'm  
15 going to tell them I was scared. You get out of it,  
16 too. You tell them you were scared. I've told  
17 them -- I've given them this evidence you were  
18 scared. Our stories are going to match and we're  
19 going to get out of this okay."

20 So the reason this statement is consistent  
21 in trial is because Jerry Armenta has shared it with  
22 Jerry Montoya. He's made sure that it's consistent.

23 And the other thing that's striking about  
24 this letter -- and I think it's telling of so many  
25 of the Government witnesses -- is the way in which

1 Jerry Armenta is manipulating Jerry Montoya to try  
2 to get him to benefit Jerry Armenta. And Jerry  
3 Armenta knows that if he gets Jerry Montoya to  
4 testify, he gets the added benefit, right? Because  
5 you get more time off your sentence the more people  
6 you can get on the side of the Government. So he  
7 talks, in the bottom of this letter, about how his  
8 daughter has died, she's gone forever, he's never  
9 going to have a chance to see her again. And he  
10 testified to you, "That was just a mistake. I  
11 didn't mean to say that." Except that he said it  
12 twice. He did mean to say it. He has a history of  
13 manipulating people using his daughter. So this is  
14 the progenitor of these four witnesses coming in and  
15 telling you a story that simply isn't true.

16 And I know other defense counsel may talk  
17 to you more specifically about the other things we  
18 learned about Jerry Armenta. We learned that he got  
19 one of those tablets, he broke it to access the  
20 internet, and then was searching for teen  
21 pornography. And the only reason he wasn't able to  
22 access actual child pornography -- that is,  
23 pornography involving girls under the age of 18 --  
24 is because Google has a filter on it. It wasn't for  
25 lack of trying. He's someone who exploits the

1 system.

2 And here I'm just showing you the addendum  
3 to Jerry Armenta's plea agreement. I'm not going to  
4 show this to you for all the witnesses I'm going to  
5 talk about. I'm just going to use this as an  
6 example. But if you recall in that last paragraph,  
7 paragraph 6 is really the operative one, and it is  
8 that these people are facing life sentences because  
9 they expect the Government to file a motion to get  
10 them less. And while it's true that ultimately what  
11 they will be sentenced to is up to Judge Browning,  
12 they don't even get to Judge Browning except through  
13 this table, except from the Government and the  
14 Government being pleased with what they do for them.  
15 So they have a motive to testify to a story that  
16 helps the Government win. And you need to keep that  
17 in mind as you evaluate their testimony.

18 The next witness I'd like to talk to you  
19 about is Jerry Montoya. And you have seen this  
20 picture before of Jerry Montoya with a big smile on  
21 his face as he's just been arrested for the murder  
22 of Javier Molina, as he's just been notified he's  
23 facing life in prison in the federal system for this  
24 crime. And the reason that he's smiling is because  
25 he had successfully convinced his three



1 co-defendants to perjure themselves to get him out  
2 of jail in the state system, and he's pretty  
3 confident he's going to come up with a scheme in the  
4 federal system that will get him to that same  
5 purpose.

6 And if you recall, so here's the letter  
7 that Jerry Armenta sent to Jerry Montoya, sent to  
8 his caseworker to try to get these false statements  
9 from Jerry Armenta, Mario Rodriguez, and Timothy  
10 Martinez to his lawyer. And he told you that he  
11 told his lawyer these were true. He told his lawyer  
12 that these statements were true, so that his lawyer  
13 would submit them to the Court to get the relief  
14 that Jerry Montoya wanted. And the relief that he  
15 wanted was to get these witnesses on the stand in  
16 front of a jury like you so they can tell a story of  
17 innocence for Jerry Montoya.

18 And you all know that story is false  
19 because you saw the video of Jerry Montoya chasing  
20 and stabbing Javier Molina. But Jerry Montoya is a  
21 master manipulator. He manipulated his  
22 co-defendants to write these false statements,  
23 manipulated his lawyer to submit them to the Court.  
24 And here is one of the motions that his lawyer  
25 submitted on his behalf, this one I think with Mario

1 Rodriguez' statement attached. And ultimately the  
2 Court acted on those perjured statements. So this  
3 is someone who will commit to a lie all the way  
4 through the court system.

5           You also heard with Jerry Montoya that he  
6 manipulated a female correctional officer at Lea  
7 County Correctional Facility, and he told you that  
8 he lied to the Government about it when he was first  
9 confronted with it because he wanted to protect her.  
10 And of course, if he wanted to protect her, he  
11 wouldn't have convinced her to bring drugs and a  
12 cellphone into the prison. He wouldn't have had sex  
13 with her in violation of federal law where she could  
14 be prosecuted.

15           So the witnesses who say they're trying to  
16 protect people when it's too late -- they shouldn't  
17 be credited. This is just self-serving statements  
18 to try to explain and mitigate what they've done, to  
19 escape the full consequences of their criminal and  
20 unethical conduct, and Jerry Montoya is a perfect  
21 example of that.

22           And then there is Mario Rodriguez. And  
23 there is a reason why the defense focused so much on  
24 him, and it's because Mario Rodriguez has done so  
25 many horrible things that he's unwilling to take

1 responsibility for. Mario Rodriguez, as the  
2 Government explained to you, was one of the last  
3 people to cooperate, so he finally decided, okay,  
4 I'm going to help the Government in October of 2017,  
5 when he had the prospect of going to trial by  
6 himself. Because his co-defendant had pled, it was  
7 just going to be him. And it wasn't a change of  
8 heart for him. It was just cold analysis. He was  
9 going to go to trial and be convicted. He could  
10 either go to trial and be convicted or he could  
11 testify for the Government, potentially get a  
12 reduced sentence and other benefits from them.

13 And what's important about Mario  
14 Rodriguez, Mario Rodriguez was the first of the four  
15 who tells the Government that while he is at PNM  
16 North with Mr. Baca in 2015, that Mr. Baca confesses  
17 to him about the Javier Molina murder.

18 And we know that this isn't true for a  
19 couple of reasons. One, by the time Mario Rodriguez  
20 is cooperating with the Government, the Government  
21 has got Jerry Armenta, they have Jerry Montoya, they  
22 have Timothy Martinez, and they have Mario  
23 Rodriguez. What they don't have is Anthony Baca.  
24 So he can get his benefit if he can give them the  
25 link to Anthony Baca, which he tries do.

1           What he tells the Government and what he  
2       told you is that he has this conversation with Mr.  
3       Baca in the rec yard at PNM North. Well, of course,  
4       as you know, the rec yard isn't recorded. So  
5       there's no way for us to test the truth of that  
6       independently. You have to just test the  
7       credibility of Mario Rodriguez.

8           But another reason to be suspicious of  
9       that statement is at the time that Mario Rodriguez  
10      was next to Mr. Baca, Eric Duran was recording them.  
11      And one of the first recordings you heard in this  
12      case was Anthony Baca and Mario Rodriguez talking to  
13      Eric Duran. Again, there is no recording of Anthony  
14      Baca talking about the Molina -- or confessing to  
15      the Molina murder. So Mario Rodriguez had to take  
16      that conversation outside of the cell and into the  
17      rec yard to explain the absence of evidence that  
18      would corroborate the story.

19           And you heard in opening Mr. Lowry said to  
20      you if it's not recorded, it didn't happen. And  
21      clearly, that's not true of events, but it is true  
22      about conversations in this case. There is a reason  
23      why Agent Acee gave these informants recorders:  
24      Because they're not credible witnesses. And if all  
25      you have to do is to rely on the testimony of Mario

1 Rodriguez, you cannot find that that conversation  
2 happened, because he's simply not credible. And as  
3 I said at the beginning, there are no recorded  
4 conversations of Mr. Baca saying, "I ordered this  
5 hit on Molina." It doesn't exist because he didn't  
6 do it.

7           You know, and Mario Rodriguez' statement  
8 to law enforcement was late because he came late to  
9 cooperating. But you heard a number of witnesses  
10 who testified about statements that they allege Mr.  
11 Baca made to them in unrecorded settings, confessing  
12 to a crime, or even some of the other men sitting  
13 behind me. And the Government tried to explain away  
14 these last-minute proclamations of confession as,  
15 "Well, we went in and we were interviewing these  
16 people, and these are the four men who are going to  
17 trial, so we much more focused our investigation on  
18 them, so that's how it came up."

19           Except when you look back at what that new  
20 evidence was, that new evidence that came up in  
21 January and February of this year is almost  
22 exclusively confessions. These men are claiming  
23 that Mr. Baca confessed to them. Confessions are  
24 pretty major events. They're things you wouldn't  
25 forget. They're things that the Government agents

1 wouldn't have forgotten to ask about when they first  
2 met with these informants.

3           The truth is that these guys had one  
4 last-ditch effort to make their bones with the  
5 federal government, and they knew that saying that  
6 Anthony Baca had confessed, much as Mario Rodriguez  
7 did, was a way to make their bones, to get the  
8 maximum benefit for their agreement, and they're  
9 just not credible under the circumstances.

10           And this is just, again, Mario Rodriguez'  
11 statement in the state court proceeding, I think.

12           So then we have Timothy Martinez, Red, who  
13 is another person who was involved in that  
14 conspiracy in state court to manufacture evidence.  
15 And he not only manufactured one statement; he  
16 revised it to manufacture a second, and then  
17 manufactured it again. And you see this handwritten  
18 statement, which is Defendants' Exhibit FO, another  
19 revised statement that he's trying to make better,  
20 Defendants' Exhibit FK; and then finally, this typed  
21 affidavit that he went over with his lawyer to  
22 submit to the Court, which was Defendants' Exhibit  
23 FP.

24           So Timothy Martinez. He is another person  
25 who claims that in 2005 Mr. Baca confessed to him

1 about Molina, once again in the rec yard where there  
2 is no recording. Mr. Martinez' claim is not  
3 credible for a number of reasons. First of all,  
4 he's just not a credible person. He came in to you  
5 and he said, "I decided to cooperate because I was  
6 walking with the Lord."

7 And once he decided to turn a cheek, to  
8 walk with the Lord, he continued to manipulate the  
9 system and commit crimes. He took over the drug  
10 distribution business for the pod of Government  
11 witnesses. He broke his tablet to access  
12 pornography. He started having an inappropriate  
13 relationship with a female correctional officer.

14 So he never changed course. He just  
15 changed teams. He left the SNM because he knew that  
16 the Government had focused on breaking it down,  
17 which is something you heard from Mr. Acee, and  
18 decided that his best opportunity to get back to  
19 dealing drugs, to get back to doing what he was  
20 doing, was to work with the Government.

21 But one of the other reasons that we know  
22 that Mr. Martinez' claim that Mr. Baca confessed to  
23 him is untrue is because by the time that Mr. Baca  
24 and Mr. Martinez were together in 2015, it was  
25 widely known that Mr. Martinez had made statements

1 to the authorities about the Javier Molina murder.  
2 You heard him talk about that, that he made  
3 statements implicating Jerry Armenta and Jerry  
4 Montoya. And the Government has beat this drum  
5 about rats and not trusting rats, and so his public  
6 information in 2015 that Timothy Martinez has been  
7 cooperating with the Government -- Mr. Baca is not  
8 going to go into a rec yard and tell him something  
9 that he's never told anyone else, that he hasn't  
10 told Eric Duran, who he confided in about so many  
11 things on recording. It's just not credible. It's  
12 another example of a Government witness recognizing  
13 at the last minute, I've got to give the Government  
14 something more to maximize my benefit in this case.

15 And during Mr. Castellano's closing  
16 argument, he talked about this letter that Mr. Baca  
17 wrote to Jerry Roark, the director of adult prisons,  
18 as another explanation for why Mr. Baca would have  
19 supported the murder of Javier Molina. And he told  
20 you that Mr. Baca had not agreed to stop recruiting  
21 for the SNM. And, of course, if you look at that  
22 letter, you'll see that he does, in fact, in that  
23 letter say that he's going to stop recruiting or  
24 will encourage that.

25 But more importantly, when Mr. Roark was



1 on the stand, you heard him. He testified that he  
2 never told Mr. Baca that he wasn't going to be  
3 returned to Southern New Mexico Correctional  
4 Facility. There is no evidence that Mr. Baca had  
5 any reason to believe that he'd be permanently  
6 locked down in PNM. And so he had to do something  
7 to retaliate against the administration. That's a  
8 pure fantasy and the evidence does not support it.

9 David Calbert. We talked a little bit  
10 about him, but I think there are some important  
11 things to note with Mr. Calbert. Again,  
12 importantly, the Government made a decision to put  
13 Mr. Calbert together with Mr. Urquizo before taking  
14 that first statement, which gave them an opportunity  
15 to bring their stories together, to make them  
16 consistent, to make the Government's case stronger.

17 And this story that he told you about how  
18 he got that paperwork is, in and of itself, not  
19 credible. First of all, we're going to look at the  
20 housing records to show that it couldn't have  
21 happened in the way that he described it. But also,  
22 the way that he says that he passes the paperwork to  
23 this guy, Cheech, through the chain link fence  
24 doesn't make sense. That Mr. Martinez or Cheech is  
25 walking with the correctional officer with his hands

1 behind his back and he somehow is allowed to back up  
2 to a cage and then slip this little piece of paper  
3 in between the links on the fence. That doesn't  
4 make any sense, that a correctional officer would  
5 allow that to happen.

6 But if you look at the housing records for  
7 Mr. Calbert and Mr. Martinez and you compare them to  
8 Mr. Calbert's testimony, again they make no sense.  
9 Mr. Calbert testified that he got the paperwork from  
10 Mr. Martinez when the two men were housed in N1-B  
11 pod, in PNM North. And as you see, they were in  
12 N1-B pod together when Mr. Martinez left N1-B in  
13 December 2012.

14 That's significant, because Mr. Calbert  
15 says that this transfer paperwork happened only a  
16 few months before he was moved to PNM South. And if  
17 you look here, you'll see that Mr. Calbert was moved  
18 to PNM South in February of 2014, almost a year  
19 after Mr. Martinez had been released from custody.

20 So the Government says, well, we're just  
21 going to ignore Mr. Calbert's testimony, and say,  
22 no, no, no, no, no, no, that it actually happened  
23 somewhere in here when the two men were in 3B and  
24 3A. But that's not what Mr. Calbert said. That's  
25 not what he testified to. He was very specific that

1 he was in N1-B.

2 And I think that the problem here is that  
3 in manufacturing his story, the witnesses are having  
4 to look back at where they are and think, okay, when  
5 was I in the same place with Joe Martinez? Okay.  
6 We were together in 1-B, so I'll say that that's  
7 when it happened.

8 So because these stories aren't true, they  
9 can't keep their details straight. You cannot  
10 believe the story that Mr. Calbert told you in this  
11 courtroom. It's simply not credible. Paperwork was  
12 not passed between Mr. Calbert and Mr. Martinez.

13 I think another question that's fairly  
14 asked is: Why would Mr. Calbert say he got the  
15 paperwork from Mr. Martinez? And I don't know. I  
16 don't know why he would pick Mr. Martinez. We've  
17 heard a lot about the infighting in the SNM, people  
18 who have had personal beefs either because of women  
19 or drugs or power, a multitude of issues. And we  
20 just don't know. We don't know why Mr. Calbert has  
21 picked Mr. Martinez. We only know that the  
22 evidence, the independent evidence, does not  
23 corroborate what Mr. Calbert testified to.

24 Then we come to Mr. Urquizo, who is the  
25 second link in this paperwork chain. And his

1 testimony is not credible either, for a couple of  
2 reasons. First of all, Mr. Urquizo, like Mr.  
3 Calbert, tells a story of getting the paperwork and  
4 passing the paperwork that doesn't match up with the  
5 housing records. He also testifies to having  
6 conversations with Mr. Baca in 2012 and 2013 about  
7 the Molina homicide that don't make any sense at  
8 all.

9           So for example, he first claims that he  
10 was with Mr. Baca in the rec yard at 3B, that  
11 Mr. Baca was in the -- that Mr. Baca was in the X  
12 pod and Mr. Urquizo was in the W pod, so they were  
13 right next to each other, they're sent out to rec,  
14 and at that point Mr. Baca tells Mr. Urquizo that he  
15 wants Javier Molina hit. And this is the quote from  
16 Mr. Urquizo's testimony. But you'll see that Mr.  
17 Urquizo, if you look at this in W pod, he said he  
18 was in W pod and Mr. Baca was in X pod. And Mr.  
19 Urquizo is in W pod for less than a day. So you see  
20 here, he leaves N3AT pod, goes to N3BW pod, and then  
21 is immediately transferred to N3BV pod. If you look  
22 at those records, I think what it shows is that Mr.  
23 Urquizo was in the W pod for about four hours that  
24 day. So they were next door to each other. So yes,  
25 they were eventually in X pod and V pod, so they

1 were in the same housing unit, but separated by a  
2 pod. Mr. Urquizo, when he testified, was very clear  
3 they were next door each other, and that's why they  
4 could be in the rec yard together, and that's simply  
5 not true. The records do not support what Mr.  
6 Urquizo says on that point.

7 It also doesn't make sense that Mr.  
8 Urquizo is meeting Mr. Baca for the very first time  
9 here and Mr. Baca is suddenly having this  
10 conversation with him, someone he doesn't know.

11 I think it was in this one Mr. Urquizo  
12 also testified he wasn't sure about the time, exact  
13 day and month they were together. But when you look  
14 at the records, he was certain about it being W, and  
15 he was certain about it being X.

16 So the second time that Mr. Urquizo says  
17 that he has a conversation with Mr. Baca was that --  
18 you remember this -- when Mr. Baca was in the Q pod  
19 and that he was doing sign language to Mr. Urquizo,  
20 who is in the rec yard that was next to the Q pod,  
21 to tell him that he wanted this hit to go against  
22 Javier Molina.

23 And Mr. Urquizo testified that this sign  
24 language conversation happened on the same day that  
25 Mr. Urquizo left PNM North to go down to PNM South.

1 And if you recall this diagram, this was Defendants'  
2 Exhibit EQ. So Mr. Urquizo is claiming that Mr.  
3 Baca is here in the Q pod, and that Mr. Urquizo is  
4 here in the rec yard and that's the way that Mr.  
5 Baca is able to do the sign language. Except if you  
6 look again at the housing records, you'll see that  
7 when Mr. Urquizo was sent to PNM South in September  
8 of 2012, Mr. Baca was not in the Q pod. He was in  
9 the S pod. So he would have been somewhere over  
10 here, nowhere near that rec yard.

11 So there's no way that as Mr. Urquizo is  
12 being transferred off to PNM South that Mr. Baca is  
13 in a window, able to signal to him.

14 And the other thing that doesn't make  
15 sense about Mr. Urquizo's story is, as you saw in  
16 this diagram, that he gets sent to PNM South in  
17 September of 2012, and after Mr. Urquizo is sent to  
18 PNM South, Mr. Baca actually goes back to Southern  
19 New Mexico Correctional Facility, and he's housed  
20 with Javier Molina for seven months in 2013 and  
21 nothing happens to Javier Molina. So if Mr. Baca  
22 was so desperate to kill Javier Molina that he was  
23 doing sign language, he's telling people he just met  
24 that he wants to hit him, and he's doing sign  
25 language through a window to convey that urgency to

1 a witness, that something would have happened in  
2 2013, and it didn't, because this conversation never  
3 happened.

4           You also heard -- let me go back. You  
5 also heard Mr. Urquizo that when he first met with  
6 law enforcement, he talked to them about Julian  
7 Romero and the hit on Julian Romero. And he told  
8 law enforcement that although Gerald Archuleta had  
9 ordered that Julian Romero be murdered, that Anthony  
10 Ray Baca had said, "No, you can't kill him. No,  
11 don't stab him. Don't kill him. You can just beat  
12 him up."

13           And that was consistent with what other  
14 witnesses have told Agent Acee. It's consistent  
15 with the recording you heard between Mr. Baca and  
16 Eric Duran, that he'd agreed that Mr. Romero could  
17 be beat up but not killed. And where Mr. Urquizo  
18 came in and testified, Oh, no, no, no, no, that's  
19 not right, Mr. Baca was the one who tried to upgrade  
20 it. And it's simply not credible. It's contrary to  
21 all the other evidence, and it's another example of  
22 a government witness trying to earn his bones,  
23 trying to maximize the benefit by helping the  
24 Government's case as much as he can. And because  
25 it's not credible, his testimony is incredible and

1 you shouldn't rely on it.

2 I'd like to talk to you about Manuel Jacob  
3 Armijo, who was one of the first witnesses to  
4 testify. Mr. Armijo testified he doesn't like  
5 Anthony Baca. I think there was testimony that they  
6 had at some point put a hit out on each other, but I  
7 think we've heard testimony throughout this trial  
8 that at some point everyone has allegedly had a hit  
9 out on them. There's a lot of disagreements in  
10 prison.

11 He said he didn't like Anthony Baca. He  
12 said that before he left prison in 2012, Baby G came  
13 up to him and said, "Hey, Anthony Baca wants you to  
14 hit Javier Molina," and nothing happened. He said  
15 no.

16 And again, the thing to remember is that  
17 Mr. Baca comes back to Southern New Mexico  
18 Correctional Facility in 2003. He's with Javier  
19 Molina for I think almost six months, and nothing  
20 happens. So this whole story, that somehow Mr. Baca  
21 is desperate to kill Javier Molina in 2011, 2012, it  
22 doesn't hold water. It's just an effort to fill the  
23 gap in the Government's case because they have no  
24 evidence that Mr. Baca was involved in that  
25 homicide.



1           The other thing -- well, I'll transition  
2 back. Anyway, I just wanted to show you, this is  
3 Defendants' Exhibit V4. This is Mr. Baca's physical  
4 location history. And it helps you to understand  
5 where he was at critical points in this case. As  
6 you see here, what I was talking about earlier, in  
7 January 17, 2013, to August 5, 2013, he's back at  
8 Southern New Mexico Correctional Facility.

9           So I'd like to transition now to talking  
10 to you about Gregg Marcantel.

11           Before I do that, I just would like you to  
12 recall there are five categories of evidence in this  
13 case that the Government needs to prove, and only  
14 one of them applies to Mr. Baca, and that is the  
15 testimony of the Government's witnesses. They're  
16 not credible individually and they're not made more  
17 credible by the fact that sometimes their stories  
18 match, because they were allowed to collude, they  
19 were intentionally put together, they were  
20 intentionally put together, although the Government  
21 and Department of Corrections were aware that at  
22 least four of them had conspired to fabricate  
23 evidence in a state proceeding. So that collusion  
24 is on the Government. Is it absolute proof that  
25 they made up their stories? Of course not. But

1 it's good evidence that they were put together with  
2 their tablets with witnesses with whom they had to  
3 share stories and that their stories match in  
4 certain ways.

5 So you heard during trial about this  
6 conspiracy to kill Gregg Marcantel. And you heard  
7 from -- this is Roy Martinez, Shadow, and he  
8 testified that he was part of that conspiracy; that  
9 in 2015 he, Eric Duran, and Robert Martinez agreed  
10 to kill Mr. Marcantel and, in fact, wrote letters to  
11 people on the street in an effort to make that  
12 happen.

13 Mr. Martinez also testified that he had a  
14 conversation with Mr. Baca in 2013 about hitting  
15 Dwayne Santistevan, that Mr. Baca was frustrated and  
16 wanted to lash out against Dwayne Santistevan. But  
17 as you heard during cross, he's one of those  
18 witnesses who's been interviewed multiple times, and  
19 it was not until trial that he suddenly -- or  
20 shortly before trial announces that, no, he has a  
21 confession; he has a confession not only to Dwayne  
22 Santistevan, but also to this conversation about  
23 Molina in 2012. So another witness on the eve of  
24 trial trying to figure in a link for the Government  
25 in a way that's not credible.

1           And what Mr. Martinez says is that he has  
2 this conversation with Eric Duran and Anthony Baca  
3 in 2013 about hitting Dwayne Santistevan and he  
4 forgets about it. It's out of his mind until he's  
5 put next to Eric Duran. And Eric Duran says, "You  
6 know what? You remember we know Pup wanted to hit  
7 Dwayne Santistevan? We should do that."

8           And eventually it morphed into a  
9 conspiracy to hit Gregg Marcantel. But Roy Martinez  
10 testified he never talked to Mr. Baca about Gregg  
11 Marcantel. He had no reason to believe that Mr.  
12 Baca wanted to do anything to Gregg Marcantel except  
13 for Eric Duran telling him so.

14           And you heard that same thing from Robert  
15 Martinez. Robert Martinez knew nothing about  
16 anything having to do with Dwayne Santistevan or  
17 Gregg Marcantel until he was spoken to by Eric  
18 Duran. It's because Eric Duran manufactured the  
19 plan to kill Gregg Marcantel. As you recall, he met  
20 with the Government for the first time in February  
21 of 2015 and he told them about this plan to kill  
22 Dwayne Santistevan. And law enforcement asked him,  
23 "What about Gregg Marcantel?"

24           And he said, "No, not Marcantel."

25           But later he tells Bryan Acee, "Yeah,

1     yeah, Marcantel."

2                     This is his plan. This is his plan to get  
3     out of prison early. This is his plan to get out of  
4     trouble. We're going to talk more about Eric Duran  
5     in a moment. This is one hundred percent the plan  
6     of Eric Duran. It was not Anthony Ray Baca's plan.  
7     And it was Eric Duran who encouraged Robert and Roy  
8     Martinez to write those letters. And they both said  
9     that Eric Duran is the reason that they did that.  
10    Eric Duran is the reason that they agreed to put out  
11    this hit on Mr. Marcantel.

12                    And in talking about the -- before I  
13    forget, in his closing, Mr. Castellano talked about  
14    whether or not Chris Garcia knew about that the plan  
15    was to get Mr. Marcantel. At what point did he  
16    know? And he suggested to you that, well, maybe Mr.  
17    Baca was having conversations with Mr. Garcia on a  
18    different phone through his wife.

19                    Here's the problem with Mr. Castellano's  
20    speculation. Every phone call that Mr. Baca made  
21    when he was incarcerated was recorded. Either it  
22    was through Eric Duran's cellphone, which was  
23    recorded, or it was through a prison phone, which  
24    you all heard it was recorded. So there are no --  
25    Mr. Baca had no way of making an unrecorded phone

1 call. And if there was such a phone call with  
2 Mr. Garcia, the Government would have presented it  
3 to you. It simply doesn't exist.

4 So Eric Duran comes up with this plan to  
5 kill Gregg Marcantel in March of 2015. He does it  
6 with Robert and Roy Martinez. And then Mr. Baca is  
7 brought back in October of 2015. And as you recall,  
8 we played for you a discussion between Mr. Duran and  
9 Mr. Baca about hitting Dwayne Santistevan, and they  
10 also mentioned Adam Vigil. And Eric Duran asks Mr.  
11 Baca, "What about Gregg Marcantel?"

12 And Mr. Baca said, "No." And I'm going to  
13 play that clip for you.

14 (Tape played.)

15 So no, Anthony Baca did not want to hit  
16 Gregg Marcantel. That was Eric Duran's idea. And  
17 as you heard through the testimony of Agent Acee,  
18 Eric Duran didn't record a single conversation  
19 involving Mr. Baca for four days after that. He'd  
20 recorded him in the days leading up to that, and he  
21 recorded him four days later. But there are four  
22 days not recorded between Anthony Baca and Eric  
23 Duran, and after that, you heard the phone call or  
24 the phone calls and recordings where Mr. Baca has  
25 ultimately agreed to hit Gregg Marcantel. And I

1 submit to you that those four days were spent by  
2 Eric Duran inducing and persuading Mr. Baca to  
3 commit that offense.

4 And as we're going to talk about in a  
5 minute, where someone doesn't want to commit a crime  
6 but then a Government agent, Eric Duran, induces or  
7 persuades them to do it, you have to find them not  
8 guilty of that offense.

9 The Government told you about some of the  
10 recordings, asking you to listen to recordings by  
11 Mr. Duran and Mr. Baca and the hit on Gregg  
12 Marcantel. And what I'd like to point out to you is  
13 that the recordings that Mr. Castellano pointed you  
14 to are late recordings. They are phone calls  
15 involving Mario Montoya, and Agent Acee testified to  
16 you that those calls happened in November 2015. So  
17 these aren't the early calls. These are the late  
18 calls after Mr. Duran has induced or persuaded Mr.  
19 Baca to join his conspiracy.

20 There was one Government's Exhibit 380 Mr.  
21 Castellano pointed out to you. It's a conversation  
22 regarding Mario Montoya when they talk about the  
23 higher one. And they're getting into talking of  
24 Dwayne Santistevan and Adam Vigil. If you listen to  
25 that call, they're not talking about Gregg

1 Marcantel. They're talking about Dwayne  
2 Santistevan, who at the time is Adam Vigil's boss.

3 But even where Mario Montoya starts  
4 talking about Gregg Marcantel -- and again, sort of,  
5 well, we should go all the way to the top -- at that  
6 point Mario Montoya is also a Government agent.

7 He's working for the Government. So his efforts to  
8 induce or persuade Mr. Baca to commit the crime of  
9 conspiracy to murder Gregg Marcantel is also  
10 attributable to the Government. It's on the  
11 Government to prove beyond a reasonable doubt that  
12 those Government agents, Mr. Duran and Mr. Montoya,  
13 did not induce or persuade Mr. Baca to commit the  
14 offense. And the independent evidence, the  
15 recordings themselves, the recording I just played  
16 for you, show that they cannot meet that burden.

17 So here's Eric Duran, who testified  
18 earlier. You not only got to meet Eric Duran; you  
19 also got to meet Zo Meechie, Zo Major, Zo Holiday  
20 and Zo all of them. And if you recall Mr. Duran  
21 testifying about his fur coat, he was flippant about  
22 it, flippant about the fact that he used Government  
23 money to buy a fur coat for himself. And you heard  
24 that he was paid almost over \$40,000 for his work in  
25 this case and ultimately given a two-year lump sum

1 of his sentence.

2 Eric Duran is a master manipulator. Every  
3 witness who has testified about him has admitted to  
4 that. Mr. Acee, when he came on the stand,  
5 testified that Mr. Duran was a master manipulator of  
6 women, could get money out of them, got some of them  
7 to bring drugs in. But his manipulation skills went  
8 well beyond that. He manipulated the Department of  
9 Corrections into giving him a two-year lump sum for  
10 crimes he fabricated. He very proudly told you, "I  
11 got the lump sum for saving two guys, Dwayne  
12 Santistevan and Gregg Marcantel."

13 But Roy Martinez told you he had forgotten  
14 about Dwayne Santistevan until Eric Duran  
15 resurrected that. And both Robert and Roy Martinez  
16 told you it was Eric Duran's idea to put Gregg  
17 Marcantel on the hit list. So neither of those  
18 men's lives were ever in danger. But to the extent  
19 that you could argue that they were, they are in  
20 danger because Eric Duran put them there.

21 And then he managed to manipulate a  
22 benefit for himself, a two-year lump sum, so he got  
23 out of prison two years early. And as you all have  
24 heard, during that time he's committed a number of  
25 offenses out in Portland, Oregon. And I'm going to



1 talk about that in a second.

2 But the other person he manipulated was  
3 Special Agent Bryan Acee. He convinced Special  
4 Agent Acee to vouch for him to the FBI office in  
5 Portland, Oregon, for him to work as an informant  
6 for them, and then he betrayed them. He betrayed  
7 them by slapping his young daughter or stepdaughter  
8 when she tried to protect her mother. He betrayed  
9 them by possessing a -- being in possession of a  
10 firearm when he was a felon, and not only possessing  
11 that firearm when he was prohibited by law from  
12 having it, but when he was under the influence of  
13 heroin. And possessing at the time heroin that you  
14 heard Officer Snodgrass testify was consistent with  
15 distribution. So selling drugs. And although he  
16 may have been working as an FBI informant at the  
17 time, it was not an authorized buy. He was not  
18 working at the time. It was personal use. He put  
19 the community of Portland in danger with the  
20 possession of a loaded firearm.

21 And then he lies to Officer Snodgrass,  
22 says to him, "Oh, no, I'm an FBI agent. This is all  
23 good."

24 Officer Snodgrass pushes him. "Let me --  
25 tell me who your handler is. Let me figure this

1 out."

2 Of course, he's not going to give the name  
3 of his handler, because it's not an official  
4 mission. He's doing his own thing for his own  
5 benefit. And ultimately Portland FBI has to  
6 terminate him. So that was a betrayal. And he had  
7 convinced Special Agent Acee that he was trustworthy  
8 enough to work for another branch of the FBI and he  
9 clearly wasn't.

10 And back in February of 2015, when he  
11 originally agreed to work with the Government, he  
12 lied to them. You heard. He told them, "I'm not a  
13 member of the SNM." He said it three times, denied  
14 he said it, and then when he was finally confronted,  
15 he had to admit that he was untruthful with the FBI  
16 and the Department of Corrections back in February  
17 of 2015.

18 He also lied to them when he said that he  
19 wasn't in trouble. Because you heard that he only  
20 began cooperating the day after a correctional  
21 officer searched his cell and found a shank. And  
22 Mr. Duran was very flippant about that. "Oh, it was  
23 nothing."

24 And Mr. Castellano said, "Oh, yeah, that  
25 came to nothing."

1 But the reason it came to nothing is  
2 because Eric Duran by that point had a relationship  
3 with the Department of Corrections and he bought his  
4 way out of that violation. The day before he went  
5 to go cooperate with the Government, he threatened  
6 the life of Sergeant Edward Urtiaga. And the  
7 Government has suggested that he did that so that  
8 the SNM wouldn't know that he was cooperating.  
9 That's fine. But there is a way of pretending like  
10 you're still a tough guy where you don't put someone  
11 in danger.

12 Mr. Duran went beyond that. He told  
13 people in prison Sergeant Urtiaga's address, the  
14 make of his car, and his license plate. That put  
15 Mr. Urtiaga in danger, and Eric Duran did that  
16 solely to protect his cover. What a selfish,  
17 manipulative man, that he would put someone in  
18 danger to serve his own needs.

19 And the Government tried to impeach him,  
20 telling you he's under investigation for something  
21 that happened last year. That's two years -- over  
22 two years after he filed the report on Eric Duran  
23 from Eric Duran threatening his life. And he told  
24 you that incident stood out in his mind. Because  
25 although many inmates have said, "I'm going to kill

1 you," or called him names, no one had ever brought  
2 out personal information against him or blurted it  
3 out in front of other inmates who might also wish  
4 him harm.

5 And you remember, he told you that not  
6 only did he threaten him, but he also referred to  
7 Marcantel as "that bitch." And you heard evidence  
8 that at the time, in 2015, Eric Duran and other  
9 alleged SNM members had been locked down as  
10 punishment for the Javier Molina murder. They  
11 didn't have visits, they didn't have phone call, and  
12 they didn't have commissary.

13 And so it was Eric Duran who was angry at  
14 Gregg Marcantel. It was Eric Duran who had the  
15 motive to come up with this conspiracy to hit Gregg  
16 Marcantel, not Anthony Ray Baca. So this was Eric  
17 Duran's conspiracy. He created it and then he  
18 managed to manipulate the Department of Corrections  
19 into rewarding him for it and also to manipulate the  
20 FBI and the federal government into rewarding him  
21 for it. He's a master manipulator. He's  
22 manipulated everyone he's come into contact with,  
23 and you cannot let him manipulate you.

24 While he was in Portland, in addition to  
25 possessing that firearm while under the influence of

1 heroin, you also heard that he was involved in a  
2 high-speed chase with a stolen police car in which  
3 were found some forged documents. And then when he  
4 wouldn't come back to New Mexico to do his duty here  
5 and a warrant was set up for his arrest, he was  
6 encountered by another police officer. And he  
7 didn't go willingly. He lied to the police officer  
8 about his identity, saying it was Brett Coleman, and  
9 forcing the police to run his fingerprints to  
10 identify him. And he told the officer he's on the  
11 phone with his lawyer and was going to sue for false  
12 arrest or excessive force, when all that was a ruse  
13 just to try to get himself out of the trouble that  
14 he was ultimately in.

15 Eric Duran is not acting out of the  
16 goodness of his heart. He hasn't had a change of  
17 heart. He's not on this path to redemption. He is  
18 a manipulator who will take every opportunity to  
19 continue his criminal lifestyle.

20 You'll also see jury instruction number  
21 11, and this pertains to the testimony of Officer  
22 Clint Snodgrass about Eric Duran. And you heard --  
23 I asked Officer Snodgrass about his opinion of Eric  
24 Duran's honesty, and he said his opinion is that  
25 Eric Duran is not an honest person, that Eric Duran

1    lied to him about the gun.  You recall he said that  
2    the weight of the gun was positioned under the seat  
3    of the car.  It was on a hump, so had the car  
4    actually been moving, the gun would have slid either  
5    forward or backward.  So where it was placed  
6    indicated to that officer that it was placed there  
7    by Eric Duran when he was sliding down in his seat  
8    and trying hide his hands.

9                   And he also told you that he knew Eric  
10   Duran was lying about the drugs because he had  
11   checked his police car that day, and Eric Duran was  
12   the first person to get into it, and there was no  
13   drugs before.

14                   He also told you that Eric Duran tried to  
15   hide the drugs, and had he actually found them, he  
16   could have said, "Hey, look what I found in your  
17   car," instead of trying to keep it so the officer  
18   couldn't see it.

19                   So you should consider that.  You should  
20   consider Mr. Duran's lies throughout his lifetime  
21   and most recently after getting that early release  
22   and considering his credibility as a witness.

23                   So this is the instruction on unfair  
24   inducement that you need to consider in deciding  
25   whether or not the Government has met its burden of

1 proving beyond a reasonable doubt that Mr. Baca is  
2 guilty of the conspiracy to commit murder against  
3 Gregg Marcantel. And what this instruction says is  
4 where Mr. Baca was not ready and willing to commit  
5 the crime of conspiracy to commit the murder of Mr.  
6 Marcantel, as charged in Count 10 of the indictment,  
7 before first being contacted or approached by a  
8 Government agent, but is induced or persuaded to  
9 commit the crime by a Government agent, Mr. Baca is  
10 a victim of unfair inducement.

11 So this instruction is not about Dwayne  
12 Santistevan. It's not about Adam Vigil. It's about  
13 Gregg Marcantel. You've heard the recording when  
14 Eric Duran first contacted or approached Mr. Baca  
15 about killing Gregg Marcantel, Mr. Baca said no.  
16 And then there was radio silence for four days. And  
17 only at that point -- at some point there is an  
18 agreement, and that agreement was only after Eric  
19 Duran induced or persuaded Mr. Baca to focus on  
20 Gregg Marcantel.

21 The burden is on the Government to prove  
22 to your satisfaction beyond a reasonable doubt that  
23 Mr. Baca was not unfairly induced by Eric Duran.  
24 And it cannot meet that burden. And as the  
25 instruction informs you, if you have a reasonable

1 doubt as to whether Mr. Baca was unfairly induced,  
2 you must find him not guilty of this crime.

3 I'm getting close to being done here. I'd  
4 like to focus on one other instruction. That's jury  
5 instruction number 35. In that instruction you are  
6 here to decide whether the Government has proved  
7 beyond a reasonable doubt the defendants are guilty  
8 of the crimes charged. The defendants are not on  
9 trial for any act, conduct, or crime not charged in  
10 the indictment.

11 And here you've heard so much evidence  
12 about other murders, about other things that Mr.  
13 Baca has done or said for which he is not on trial.  
14 And this instruction requires you to put them to the  
15 side. You can consider the conversations he had  
16 about Jerry Armenta and his family for purposes of  
17 the enterprise. But you can't consider -- that's  
18 not evidence that he committed an offense in this  
19 case. You can't put aside all of the acts evidence  
20 that you've heard about him and focus just on: Did  
21 he murder Javier Molina? Did he conspire to murder  
22 Javier Molina? Did he conspire to murder Gregg  
23 Marcantel? And the answer to all three questions  
24 has to be no, he's not guilty of any of those  
25 offenses.



1           The Government has built its whole case  
2 against Mr. Baca with respect to both Javier Molina  
3 and Gregg Marcantel on witnesses who have not only  
4 the motive to lie but the opportunity to lie. They  
5 will benefit from you finding Mr. Baca guilty of  
6 these offenses by giving that advantage to the  
7 Government.

8           I ask you to take these instructions  
9 seriously, to consider their testimony very  
10 carefully, all the reasons why you shouldn't trust  
11 them. Don't allow the fact that there were nine of  
12 them or ten of them sway your decision if you find,  
13 after fairly considering the evidence, that none of  
14 them were credible.

15           You have heard a lot about a world that  
16 you don't live in, the world of prison and the world  
17 that may lead you to believe that life isn't as  
18 valuable there or truth isn't as valuable there.  
19 But justice is as valuable there, because justice is  
20 as much about the people who mete it out as the  
21 people who get it. And it's up to you to hold the  
22 Government to its burden of presenting you with  
23 credible evidence that meets the standard of beyond  
24 a reasonable doubt that Mr. Baca is guilty of the  
25 offenses charged against him. And when you look at

1 the evidence fairly, when you hold it to that  
2 scrutiny and that level, and hold the Government to  
3 its burden, you will find Mr. Baca is not guilty of  
4 conspiring to kill Javier Molina, he's not guilty of  
5 murdering Javier Molina, and he's not guilty of  
6 conspiring to murder Gregg Marcantel. So at the end  
7 of all this, I will ask you to enter not-guilty  
8 verdicts on all of those counts. Thank you.

9 THE COURT: Thank you. Thank you, Ms.  
10 Duncan.

11 Let's take another break before we start  
12 the next closing argument. I'm going to remind of a  
13 few things that are especially important. Until the  
14 trial is completed, you're not to discuss the case  
15 with anyone, whether it's members of your family,  
16 people involved in the trial, or anyone else. And  
17 that includes your fellow jurors.

18 If anyone approaches you and tries to  
19 discuss the trial with you, please let me know about  
20 it immediately. Also, you must not read or listen  
21 to any news reports of the trial. Again, don't get  
22 on the internet and do any research for purposes of  
23 this case.

24 And finally, remember that you must not  
25 talk about anything with any person who is involved

1 in the trial, even if it doesn't have anything to do  
2 with the trial.

3 If you need to speak with me, simply give  
4 a note to one of the court security officers or Ms.  
5 Standridge.

6 I am going to continue to repeat these  
7 before we take breaks this afternoon. But if for  
8 some reason I don't, keep them in mind each time we  
9 do take a break.

10 All right. We'll be in recess for about  
11 15 minutes. All rise.

12 (The jury left the courtroom.)

13 THE COURT: All right. Who is going to go  
14 next? Mr. Villa.

15 MR. VILLA: Yes, Your Honor.

16 THE COURT: You were thinking you might be  
17 going about an hour?

18 MR. VILLA: Yes, maybe an hour 15, but it  
19 will be right in there.

20 THE COURT: Okay. Who is going to go  
21 next, and how long -- were you still looking at  
22 going 30 to 45 minutes?

23 MS. BHALLA: I'm hoping it will be 45 to  
24 an hour, Your Honor. I'm going to try my best to  
25 keep it at 45 minutes.

1 THE COURT: What's y'all's wishes and  
2 desires? You think I ought to take a break between  
3 you, Mr. Villa, and you, Ms. Bhalla? Is that going  
4 to be a little long for the jury?

5 MS. BHALLA: I think it's a good idea,  
6 Your Honor.

7 THE COURT: All right. So we'll plan on  
8 that. So when we come back, I'll call on you, Mr.  
9 Villa.

10 MR. VILLA: Yes, Your Honor. That sounds  
11 good, Your Honor.

12 THE COURT: All right. We'll be in recess  
13 about 15 minutes.

14 (The Court stood in recess.)

15 THE COURT: Let's go on the record.  
16 Anything before we bring the jury in, Mr.  
17 Castellano, Ms. Armijo?

18 MR. CASTELLANO: No, Your Honor.

19 MS. ARMIJO: No, Your Honor.

20 MR. VILLA: Your Honor, briefly. It's  
21 possible I could wrap it up in 45 minutes. And I  
22 talked to Ms. Bhalla, she's aware of that. If  
23 that's the case, the Court may want to just plow  
24 ahead.

25 THE COURT: Okay. You think yours is

1 about how long, Ms. Bhalla?

2 MS. BHALLA: I haven't timed it, Judge, to  
3 be honest, but I don't intend to go on that long  
4 anyway. So I'm hoping I can keep it to 45. The  
5 only issue is, do you need to change the -- so I'll  
6 leave it up to the Court or maybe we could ask the  
7 jury if they want to take a break. If they want to  
8 take a break, we can. If they want to keep going,  
9 I'm game.

10 THE COURT: I think probably 45 minutes,  
11 if Mr. Villa hits it about 45, then I probably will  
12 call on you. And if for some reason you want to  
13 take a break, or something -- if you don't, don't  
14 rush. We're not going to go anywhere. You can set  
15 up and things like that, but we'll probably just  
16 kind of plow ahead.

17 MS. BHALLA: To be honest, I think my  
18 preference would be to just ask the jury what they  
19 want, if somebody needs to use the restroom.

20 THE COURT: All right. I'll ask them.

21 MS. BHALLA: Thank you, Your Honor.

22 THE COURT: All rise.

23 (The jury entered the courtroom.)

24 THE COURT: All right, Mr. Villa, do you  
25 have a closing argument on behalf of Mr. Perez?

1 MR. VILLA: I do, Your Honor.

2 THE COURT: Mr. Villa.

3 MR. VILLA: Counsel, Mr. Perez, Your  
4 Honor.

5 THE COURT: Mr. Villa.

6 MR. VILLA: Ladies and gentlemen of the  
7 jury, good afternoon.

8 Rudy Perez never agreed to kill Javier  
9 Molina. He wasn't given a choice. And you can't  
10 enter into any sort of agreement to commit a murder  
11 if you don't have a choice. And you can't enter  
12 into an agreement to commit a murder if you don't  
13 know that that's what's going to happen. And ladies  
14 and gentlemen, you've heard the evidence about what  
15 happened in Rudy Perez' cell, and the only evidence  
16 that there is comes from Mario Rodriguez.

17 Now, the Government is going to tell you,  
18 Ms. Armijo, when she gets to argue last, is going to  
19 tell you, you can look at Rudy Perez' statements  
20 made to Billy Cordova. I'll talk to you about those  
21 in a little while. Those statements were made 23  
22 months later, in the face of rumors that Rudy had  
23 cooperated when Rudy was scared, when Rudy had been  
24 in solitary confinement for 23 months, and the only  
25 person he had to talk to was Billy Cordova.

1 Billy Cordova, yet another master  
2 manipulator. Billy Cordova, who admitted that when  
3 he testified in December about his drug use to Judge  
4 Browning, that he wasn't telling the truth.  
5 Somebody who is willing to lie on the stand, ladies  
6 and gentlemen. He got next to Rudy Perez 10 days at  
7 least before he got that recording device. Ten days  
8 to manipulate Mr. Perez, to get him ready for that  
9 recording device, and then record him.

10 But the evidence you have that took place  
11 on March 7, 2014, is from Mario Rodriguez. And you  
12 can't trust Mario Rodriguez. You can't believe what  
13 he has to say. But even if you believe what he has  
14 to say, even if you take some of it at value --  
15 because we know he killed Molina; we know Mario  
16 Rodriguez is the critical player in the death of  
17 Javier Molina. So we know that he had a role and  
18 that he needed tools to kill Javier Molina, and the  
19 tools that he told you he used were Rudy Perez'  
20 walker.

21 But the question about whether Rudy Perez  
22 committed any sort of crime, agreed to do anything  
23 wrong, is a question that you have to look at in  
24 what happened in that cell. Because we know from  
25 Mario Rodriguez that Mario got Rudy's walker. Mario

1 took the walker and flipped it over, got the piece,  
2 and remember, he said he was trying to figure out a  
3 way to get it off. He found some nail clippers. He  
4 took the nail clippers off and he walked out of Rudy  
5 Perez' room.

6 And the testimony you heard, ladies and  
7 gentlemen -- and I'll show you the time line here in  
8 a minute -- that occurred, according to Mario, at  
9 about 2:30 in the afternoon. And within just a few  
10 hours, Javier Molina was dead. And nothing else was  
11 done in any way, shape, or form by Rudy Perez.

12 So to analyze whether Rudy Perez did  
13 anything wrong or committed any type of crime,  
14 you've got to look at what happened in that cell.  
15 And the only evidence that the Government has  
16 presented to you is from Mario Rodriguez. And Mario  
17 was very clear: Rudy didn't help. He didn't  
18 provide any assistance in taking that piece off his  
19 walker. Rudy didn't say, "Yeah, let's do this."  
20 Rudy didn't say, "Sounds like a good plan to me."

21 Rudy didn't say any of those things. All  
22 you heard from Mario Rodriguez, if you take what he  
23 says as true, Rudy said, "I'm down for whatever as  
24 long as it's not me."

25 Well, what does that statement tell us, if



1 that's the statement that's the truth? That tells  
2 us that Rudy is concerned, "as long as it's not me."  
3 He doesn't want to be hurt. He doesn't want to be  
4 the one in harm's way. "I'm down for whatever as  
5 long as it's not me" tells you he doesn't know  
6 what's going on.

7 And I think that this is a critical piece  
8 for you all to understand. And we'll talk about the  
9 jury instructions a little bit more. But to be  
10 guilty of conspiracy to commit murder, you have to  
11 share the object of the conspiracy with those that  
12 you are conspiring with.

13 The object of this conspiracy that Mario  
14 Rodriguez had was to kill Javier Molina. So for  
15 Rudy to share that intent, he has to know that's  
16 what's going on. And you can't trust the statements  
17 that Rudy made 23 months later to Billy Cordova, the  
18 statements that were at best puffing, at worse Rudy  
19 trying to save himself because he's afraid that he's  
20 going to be attacked, that he's going to be killed,  
21 because they think he's a cooperator, statements  
22 that are sort of akin to a fish story or people  
23 sitting around sort of telling lies, right?

24 I mean, think of a profession -- I have to  
25 relate to attorneys -- we go out, we talk about our

1 trials, we talk about our war stories. And I used  
2 to work with an attorney who liked to say, "Yeah,  
3 we're sitting around telling lies." Right? Because  
4 that's what goes on. And in prison you don't say,  
5 "Gosh, I was really scared when Mario Rodriguez came  
6 into my cell, and I was hoping he wasn't going to  
7 hurt me. Gosh, I was really afraid."

8           You don't do that in a prison environment.  
9 You do what Rudy Perez did to Billy Cordova and say,  
10 "I did what I was supposed to do. I kept my mouth  
11 shut, and that was it."

12           What's interesting, ladies and gentlemen,  
13 is that at no point in time does Rudy ever tell  
14 Billy Cordova that he said to Mario Rodriguez, "I'm  
15 down for whatever as long as it's not me."

16           That's not what he says, because that's  
17 showing weakness. That's showing fear. And you  
18 can't do that. You can't do that in front of anyone  
19 that you're in prison with, a fellow at least Rudy  
20 thought at the time an SNM Gang member.

21           How do we know that Rudy wasn't given a  
22 choice? Well, look at Mario Rodriguez' testimony.  
23 He says that when he came to Rudy's door, he asked  
24 for the door to be opened, not Rudy. Remember  
25 Corrections Officer Borjas. His testimony was if an

1 inmate is in their cell and they want their door  
2 open, they flip their light. And that's how we know  
3 we open their door.

4 But Mario Rodriguez testified that he  
5 asked that the door be opened, and he came in there.  
6 And whatever you think about what happened when  
7 Mario Rodriguez came up to talk to the judge and  
8 whether he was going to attack Mr. Castellano, we  
9 know good and well that Mario Rodriguez was not  
10 reformed come March 7, 2014. And we know good and  
11 well that a man like Mario Rodriguez who is capable  
12 of committing the violence that you saw with your  
13 own eyes is not someone to be messed with. And we  
14 know good and well that Rudy Perez didn't have a  
15 choice. What was he going to do? "Don't do that or  
16 I'll kick your ass."

17 Rudy Perez. You heard about his physical  
18 state at the time. He was in no position to do  
19 that. What was Rudy Perez going to do? "If you  
20 take that, I'm going to tell on you."

21 What do you think Mario Rodriguez would  
22 have done to Rudy if he had said that? What was  
23 Rudy Perez going to do? Stop Mario? Run out into  
24 the pod and yell and scream and say, "Something is  
25 going on, I don't know what it is"?

1           So no, Rudy had no choice and he was never  
2 given a choice. If he had, you would have heard it  
3 from Mario Rodriguez. I mean, Mario is smart enough  
4 to tell the right story. He's smart enough to say,  
5 "Oh, yeah, Rudy was down. I explained to him what  
6 was going on. I told him about this so-called  
7 paperwork on Javier Molina. I told him what we were  
8 going to, and he said, 'Let's do it. I'm on  
9 board.'"

10           You didn't hear any of that from Mario  
11 Rodriguez. What you heard about from Mario  
12 Rodriguez was him trying to fix what he originally  
13 told FBI Agent Stemo. Because on October 24, 2017,  
14 when he went to talk to Agent Stemo, he let a little  
15 bit of the truth out. He told Agent Stemo, "When I  
16 went in there, Rudy looked scared. And when Rudy  
17 made that statement to me, I interpreted that as he  
18 was scared, he was fearful."

19           And you know that Mario Rodriguez thrived  
20 on being feared. So of course, that makes sense.  
21 And somebody can't enter into an agreement to commit  
22 a murder if they're in fear, if they're scared.  
23 That's not a choice. Rudy never had a choice.

24           Now, you have to think about Mario  
25 Rodriguez' thinking at this time. Okay? Remember

1 what you heard from Rob Martinez, Baby Rob. He took  
2 the stand. He's the one that said he went up to  
3 STIU -- or I think he went to the case manager,  
4 before the FBI was ever involved. He provided a  
5 shank that he had held in his rectum, and said, "I'm  
6 done. I don't want to be involved in this anymore.  
7 I'm out of here."

8 Baby Rob, Rob Martinez. So if you want to  
9 believe somebody, there is somebody who threw down  
10 their arms and made this statement, the statement  
11 that Mr. Castellano says is such a big deal with  
12 Mario Rodriguez, before the FBI ever got to him,  
13 before there was any RICO, before anything.

14 And what did Baby Rob tell you on the  
15 stand? That he, Mario Rodriguez, Lupe Urquizo, and  
16 Mauricio Varela, who we'll talk about a little bit  
17 more, all sat down in PNM in 2013 and they talked  
18 about Javier Molina and this idea that he had  
19 cooperated with the police and that he needed to be  
20 taken care of. And Baby Rob, Rob Martinez, told you  
21 that they all decided, the four of them -- they  
22 decided the first one down to Southern New Mexico is  
23 going to take care of Molina. They didn't decide  
24 we're going to get the paperwork, we're going to  
25 make sure it's done right. They said, "The first

1 one down there is going to take care of Javier  
2 Molina.

3 And who was Baby Rob to Mario Rodriguez?  
4 Well, Baby Rob, Rob Martinez, four years -- excuse  
5 me, four decades, 40 years in the SNM, was a leader.  
6 He was as high up as you could go, and Mario looked  
7 up to him. He strived to be like Baby Rob. He  
8 wanted to be a leader, Mario did. He had this  
9 problem with the sex offense that was probably going  
10 to prohibit him from moving very far up. You even  
11 heard, I asked Baby Rob, I said, "Mario couldn't be  
12 a leader because of that."

13 And Baby Rob said, "I would have made him  
14 a leader."

15 I asked him, "Well, other people would  
16 have had a problem with that."

17 He said, "Yeah, it's a problem." Mario  
18 was always running from that.

19 So think back to the Sosoya incident.  
20 Sosoya was the guy that Baby Rob had this problem  
21 with in PNM. There was this dispute. And Baby Rob  
22 talked about how he went up onto the tier and said,  
23 "Look, this is between me and Sosoya." Sosoya was  
24 another SNM member. "Everybody, I'll take care of  
25 it."

1 He goes up to the tier and talks to all  
2 the guys, they say, "Okay, no problem. No problem."

3 But not Mario. Mario says, "I'll help."  
4 He wanted to help, because he looked up to Baby Rob,  
5 he wanted to be a leader, and he loved the violence.  
6 You could see in Mario's eyes when he testified for  
7 two days how much he loved that violence. And he  
8 agreed to help Baby Rob. This is in 2011. And he  
9 made a shank and they talked about the plan to kill  
10 Sosoya out in the yard up in PNM.

11 And Baby Rob said, "Mario just went for  
12 it. I thought there was going to be this -- we were  
13 going to wear him out on the basketball court. But  
14 Mario just went in for it, so I jumped in, too."

15 And you heard about how Mario stabbed  
16 Sosoya in the back of the neck. They're wrestling  
17 to the ground, they're biting, clawing. Mario bites  
18 his ear. The teargas starts comes in. Baby Rob  
19 gets hit with the head with teargas. There's this  
20 melee.

21 And Mario is indicted for that. That's  
22 the trial that was coming in November of 2017 right  
23 before Mario Rodriguez decided to go work for the  
24 Government. And who was going to testify against  
25 Mario Rodriguez? Baby Rob. Rob Martinez. So this

1 wasn't about some epiphany that Mario Rodriguez had,  
2 "I'm going to be a nice guy, I'm going to stop being  
3 violent, I'm going to stop murdering people."

4 It was exactly as Ms. Duncan said. It was  
5 cold calculation. Baby Rob was going to testify  
6 against him, and he was going to get convicted and  
7 he knew it, and he didn't want to spend the rest of  
8 his time in solitary confinement. He wanted the  
9 benefits that the Government had to offer him.

10 And it was also sort of symbolic, I think,  
11 to Mario Rodriguez. The guy he looked up to, the  
12 guy he strived to be was now going to testify  
13 against him. So he realized he didn't have any  
14 choice.

15 And he also realized that his good friend  
16 from Silver City, Timothy Martinez, was going to  
17 testify against him in Javier Molina's murder; that  
18 the Jerrys, Jerry Montoya and Jerry Armenta, were  
19 going to testify against him, and that he was on  
20 video and a very active participant in the Javier  
21 Molina homicide. And that that -- you heard Mr.  
22 Castellano admit it, he pled in the Javier Molina  
23 murder to a life sentence.

24 And the only way out of that life sentence  
25 is for the Government to file a motion. And in



1 order for Mr. Rodriguez, his attorney, and the  
2 Government and the judge to evaluate what kind of  
3 sentence should Mario Rodriguez get, they're going  
4 to look at: What did his testimony accomplish. And  
5 he knew that even though he never gave Rudy Perez a  
6 choice, he needs a conviction from you all on Rudy  
7 Perez, because that will help him. You better  
8 believe it will help him. You better believe that  
9 he's going to argue to this Court at some point down  
10 the road, "I helped get Mr. Rudy Perez convicted,"  
11 if that's the verdict that you return. So I need to  
12 fit my testimony.

13 So he changed his story. He changed his  
14 story from what he told FBI Agent Stemo. He said,  
15 "No, Rudy looked fine. He wasn't in fear."

16 He's smart enough to know he can't add all  
17 the things that we know would have really been told  
18 if Rudy Perez had actually agreed. He was smart  
19 enough to do that, but he took away the fear part,  
20 because he knew that was a problem. He knew Rudy  
21 Perez couldn't agree if he's in fear for his own  
22 life. And so Mario Rodriguez testified the way he  
23 did.

24 But think back to that timeframe. Okay?  
25 We talked about how Mario Rodriguez sat down with

1 Baby Rob and Lupe Urquizo and Mauricio Varela and  
2 said, "First one to Southern, get Molina." And  
3 Mario Rodriguez was the first one to Southern. He  
4 gets there in December of 2013, just a couple of  
5 months after Rudy Perez had gotten back from being  
6 in the hospital for those two years that you got to  
7 hear about.

8 And sure enough, what happens come March  
9 6, March 7, Javier Molina is still alive, and Lupe  
10 Urquizo and Mauricio Varela, the two guys that Mario  
11 had agreed with, with Baby Rob, to kill Javier  
12 Molina, they show up. And they show up in the  
13 yellow pod, the pod adjacent. And Javier Molina is  
14 still alive.

15 So now Mario Rodriguez isn't looking so  
16 good. You heard from Agent Acee that he had gotten  
17 to the point where he was considered to be running  
18 the pod, the blue pod, Mario Rodriguez. And Javier  
19 Molina is still alive. And Lupe Urquizo and  
20 Mauricio Varela, they're down here now, and word is  
21 going to get back to Baby Rob, I didn't do my job.  
22 I didn't do what I was supposed to do. I was the  
23 first one to Southern, and Javier Molina is still  
24 alive. So he gets to work. He gets to work very  
25 quickly.

1 And let's get back to the question of:  
2 What did Rudy know at the time Mario came into the  
3 cell? And I told you at the beginning, Rudy didn't  
4 know that it was Javier Molina who was going to be  
5 killed.

6 Well, how do we know that? Mario never  
7 testified about it. The Government didn't ask him.  
8 So you don't have that evidence. So you have a lack  
9 of evidence. That's step number 1 in your  
10 calculation about proof beyond a reasonable doubt.

11 But look at step number 2. And I want to  
12 go back to the Defendants' Exhibit EY, which I'll  
13 show you on your screen. This is the time frame.  
14 Now, look at number 4 here. Okay. So number 4 is  
15 when Mario Rodriguez physically took the piece from  
16 Rudy's walker and put it in his hamper in his cell.  
17 This is 2:25 or 2:30 p.m. on March -- let's go back  
18 to the main thing. This is on March 7th. Okay?

19 So March 7th, at about 2:30, Mario says he  
20 goes in and takes the piece from Rudy's walker.  
21 Okay?

22 Now let's flip over to the next page.  
23 We'll scroll down to the next page. Around March 7,  
24 right here, Timothy Martinez comes back from working  
25 at the wheelchair program at 3:45. Javier Molina's

1 assault begins around 5:18.

2 Now, what we know from the situation with  
3 Timothy Martinez and Mario Rodriguez is that Mario  
4 Rodriguez says to Timothy Martinez when he comes  
5 back -- let's talk about what he doesn't say. He  
6 doesn't say, "Hey. We've got paperwork on Javier  
7 Molina. We've got to kill him, and here's what  
8 you're going to do."

9 He's not like that. He's very coy. He's  
10 very -- he's got to keep this low-key because he  
11 knows that somebody might foil the plan. Somebody  
12 might drop a kite. Somebody might say something to  
13 the COs. So he's very careful with Timothy  
14 Martinez. He says, "Go get high. Go to Javier  
15 Molina's room and get high."

16 Timothy Martinez is sort of puzzled.  
17 "Well, if you want to get high, I'll give you some  
18 drugs."

19 "No, no, no. You go get high."

20 "Well, if Javier needs some drugs, I'll  
21 give him some drugs."

22 And Mario tried to not have to tell  
23 Timothy Martinez what the plan was. He was waiting  
24 until the last possible second. Well, why did he  
25 want to do that? He wanted to do that because he

1 didn't want the plan to get out. He didn't want  
2 someone to say anything to a CO, he didn't want  
3 somebody to drop a kite. He wanted to keep it as  
4 close to the vest as possible. So he's not going to  
5 tell Timothy Martinez, the guy who is ultimately  
6 going to be tasked with incapacitating Molina --  
7 originally the plan was supposed to be a knockout  
8 and ended up being a chokeout. If he's not going to  
9 tell Timothy Martinez, why would he tell Rudy?

10 He doesn't have to. And you've got no  
11 evidence, zero evidence that anybody ever told Rudy.  
12 And you'll see -- we'll go through the recordings  
13 here in just a little bit. But what Rudy says 23  
14 months later doesn't help you, because he's scared,  
15 because he's puffing, because he's trying to look  
16 tough, because he knows that in his weak state,  
17 where these rumors are out there after him, the only  
18 thing he can do is try to look tough. But you never  
19 heard that Rudy ever actually knew what the purpose  
20 was.

21 Now, we do know that there were lots of  
22 shanks in the pod and throughout the prison. So  
23 Rudy, when he sees Mario Rodriguez take the piece,  
24 he's not naive. He can imagine that perhaps it's  
25 going to be used to make a shank. But he doesn't

1 know if that's just for Mario, for somebody else,  
2 for Mario to hold on, to keep on his person. All  
3 these guys told you, "I kept shanks on me all the  
4 time." Mario kept them on him right up until the  
5 time he went and talked to the Government.

6 So Rudy could have thought anything. This  
7 is just for Mario. And what's Rudy going to do? Is  
8 he going to tell Mario Rodriguez, "No, you can't  
9 mess with my walker"?

10 No, he's just going to sit there and take  
11 it, because that's what he has to do. Because  
12 Mario, you heard from Agent Acee, is running the  
13 pod. Mario is vicious, he's fierce, he's got a  
14 reputation. And what's Rudy going to do?

15 You know, you hear this from  
16 Mr. Castellano, you heard it from Ms. Armijo in  
17 opening. Ms. Armijo, in her opening statement, said  
18 Rudy is a senior member of the SNM. And Mr.  
19 Castellano said Rudy is a soldier in the SNM.

20 Look, we don't dispute that Rudy was in  
21 the SNM, but we certainly dispute the term "senior  
22 member" or "soldier." A senior member in the SNM is  
23 somebody who has been in for a really long time, has  
24 earned their way, and is sort of on retirement  
25 status. That's somebody like Baby Rob.

1           A soldier is somebody who can fight,  
2           somebody like Billy Cordova, somebody that has to go  
3           do work. You heard about how you're in the SNM,  
4           you've earned your bones, you have an SNM tattoo or  
5           you can get an SNM tattoo. You saw Rudy didn't have  
6           any SNM tattoos.

7           You never heard any evidence about how  
8           long he'd been in the SNM. You never heard any  
9           evidence whatsoever that he was a leader, that he  
10          was a shot-caller, that he was anything other than a  
11          man trying to recover from a number of ailments.  
12          He'd only been back from the prison hospital for six  
13          months. He'd been sitting in his cell most of that  
14          time; never, hardly ever, came out. That's not a  
15          soldier. And it's definitely not a soldier in Mario  
16          Rodriguez' mind.

17          Mario Rodriguez wanted soldiers who could  
18          fight. Mario Rodriguez wanted soldiers who were  
19          tough. Rudy was on a walker. Rudy took a dozen  
20          medications, half of which made him sedated, and had  
21          a compounding effect of sedation, where he pretty  
22          much slept a lot of the time. He didn't go out to  
23          yard all the time. He didn't come out of the pod  
24          that much.

25          That's not somebody who is a soldier for

1 the SNM and that's not someone who is a senior  
2 member of the SNM the way Ms. Armijo wanted you to  
3 believe that in the beginning of this trial. That's  
4 just somebody trying to get by. That's somebody  
5 who, in Mario Rodriguez' eyes, is weak and could be  
6 preyed upon and could be used as a tool. And the  
7 tool that Mario Rodriguez saw was the piece from  
8 Rudy's walker. Do you think it would have made one  
9 iota of difference to Mario Rodriguez if Rudy said,  
10 "I'm not down for whatever," or, "You can't do this.  
11 I'll stop." Or, "Wait a minute, wait a minute.  
12 Explain to me what this is for. I need to know  
13 what's going on."

14 It didn't make a difference and that's why  
15 he didn't ask. He just came and took it. That's  
16 not an agreement to break the law, and it certainly  
17 isn't an agreement to conspire to murder Javier  
18 Molina when you don't even know what the object of  
19 the agreement is, you don't even know what the  
20 purpose of the agreement is.

21 Ladies and gentlemen, you saw the jury  
22 instruction. I'll talk to you about it in a minute.  
23 But proof beyond a reasonable doubt is a doubt  
24 that -- is proof that leaves you firmly convinced  
25 and that if you have a doubt based on reason and



1 common sense, then you have a reasonable doubt. So  
2 I'm going to ask you to think about this in your  
3 deliberations. Do you have a reasonable doubt about  
4 what took place in that cell with Mario Rodriguez  
5 and Rudy Perez? Has the Government left you firmly  
6 convinced that Rudy agreed of his own free will,  
7 without threats, that he did anything wrong at all  
8 except to stand by and I guess not say anything?

9 Because once Mario Rodriguez left that  
10 cell, it's over. That's the time in which Rudy  
11 either agreed or didn't agree. And you didn't hear  
12 any evidence whatsoever that he agreed, that he ever  
13 had a choice. Because after that, everything  
14 happens quickly, right?

15 Remember what happens at about 4:00,  
16 shortly after Timothy Martinez gets back from the  
17 wheelchair program. They go into count and in  
18 count, remember, everybody gets locked into their  
19 cell and they're not allowed out until they've  
20 actually counted everybody in the prison. And the  
21 testimony you heard is that that generally takes  
22 about an hour. So approximately 5:00, count is  
23 over.

24 Again, Rudy doesn't know why Mario took  
25 his piece. He doesn't know what to do. Perhaps

1 he's going to try to figure it out, he's going to  
2 talk to people, he's going to see what the word is,  
3 or he's just going to keep quiet. Because if Mario  
4 Rodriguez just wanted to have Rudy's walker piece so  
5 he could make some nice shanks for himself to carry  
6 around the prison, that's what was going to happen,  
7 and there wasn't anything Rudy could do about it.

8 So Rudy has to sort of think about what's  
9 going on. And like everybody else in the pod who  
10 wasn't involved in this crime or wasn't taken  
11 advantage of like Rudy Perez, he witnessed what  
12 happened when Javier Molina comes running down the  
13 stairs and is stabbed to death, has already been  
14 stabbed to death. So he knows. And if he didn't  
15 know, he sure as heck knew when Warden Mulheron and  
16 STIU Officer Holguin came to interview him.

17 Remember, those are witnesses that Mr.  
18 Perez called. The warden of Southern New Mexico  
19 Correctional Facility. The Government didn't call  
20 him and say, "Tell us about your interview with Rudy  
21 Perez."

22 And the warden, who then asked STIU  
23 Officer Holguin to come and talk to Mr. Perez -- the  
24 Government didn't call that witness and say, "Tell  
25 us about your interview with Rudy Perez."

1           We called those witnesses. And both those  
2 witnesses say after that interview with Mr. Perez  
3 they were concerned for his safety. And not his  
4 safety because his walker wasn't usable anymore, or  
5 he might slip and fall. They were concerned about  
6 him going back into congregate housing in an SNM  
7 pod. Because of Mario Rodriguez, ladies and  
8 gentlemen. It's an easy inference to draw. He was  
9 threatened. He didn't have a choice. That's not an  
10 agreement.

11           Let me show you Defendants' Exhibit FY.  
12 You'll of course have this available to you in the  
13 jury room, but this is Rudy Perez' medical history.  
14 And we know about 2012, the period of time in which  
15 he's going through these abdominal surgeries because  
16 he has a bowel obstruction, it goes terribly wrong,  
17 they're going to put him in palliative care. In  
18 October 2012 he ends up having an additional seven  
19 procedures with all these different tubes and  
20 problems going on.

21           And let's look at the next page. He's  
22 ultimately sent back to UNM for the surgery, all the  
23 way in June of 2013; right? So we're less than a  
24 year before the Javier Molina murder took place.  
25 His seizures are still giving him problems, but

1 remember what Dr. Brislen told you. The reason for  
2 this surgery is to put Rudy Perez back together  
3 because he had this frozen abdomen and he had so  
4 many problems that they couldn't actually patch him  
5 up. And that's what they do during this period of  
6 time.

7 And then he goes, here in October,  
8 finally, after spending his time at UNM recovering,  
9 here in the green we've got the prison hospital. He  
10 finally goes back to -- October 2013 he goes to  
11 Southern New Mexico Correctional Facility.

12 And we'll scroll down to the next page.  
13 And during this period of time you have the problems  
14 with the seizure medication. They're changing it.  
15 His health is fragile. He's still having problems.  
16 He's having to use a walker. He's on six  
17 psychoactive medications that leave him with the  
18 side effects of sedation and profound sedation, and  
19 interactions with each other are causing more  
20 sedation.

21 So this is not somebody who is soldiering  
22 for the SNM, leading the SNM, or presenting any sort  
23 of threat whatsoever to Mario Rodriguez or anybody  
24 else at this point in time.

25 Now, I want you to think a little bit

1 about the core of Mr. Perez. If you're in a cell  
2 and you want to take a stand and say, "All right,  
3 Mario, you're not taking this piece from my walker.  
4 I don't care. I've had enough of it. You're not  
5 going to do it." And you're going to fight. What's  
6 the single greatest strength as humans that we have?  
7 Our core. That's what, to keep us -- even if you  
8 could say that with his legs in shambles the way  
9 they are and having to use a walker, that if he  
10 could get his hands around Mario Rodriguez and he  
11 wanted to finally put up a stand, he's got no core  
12 strength. Mario would toss him around like a rag  
13 doll. Rudy didn't have a choice to do anything and  
14 he didn't know what Mario Rodriguez was up to.

15 So thank you for that exhibit.

16 Let's just take a minute. I want you to  
17 pause and think about this. Is it justice that  
18 Mario Rodriguez, the man who masterminded Molina,  
19 who decided way back in 2013 with Baby Rob, Lupe  
20 Urquizo, and Mauricio Varela to kill Javier Molina,  
21 the first one to Southern does it; who goes and  
22 takes advantage of Rudy, because Rudy is no good to  
23 him, he's not a soldier, he's not a leader, he's not  
24 a senior member of the SNM, he's a liability; who  
25 takes advantage of Rudy Perez' weakness, takes the

1 piece from his walker, essentially disabling it. I  
2 mean, you saw the photographs of the walker. It's  
3 Governments 89 and 90, if you want to look at them  
4 again when you're in the jury room. That walker is  
5 not usable. It's not going to hold Mr. Perez up.

6 Is it justice that Mario Rodriguez gets a  
7 lesser sentence and Mr. Perez gets found guilty? Is  
8 that justice? Is that why we're here? Because I  
9 want you to think about: What's the role the jury  
10 plays in our system? There is a reason that we ask  
11 folks from the community to be on jury duty. We  
12 don't ask the judge to do it. The judge decides the  
13 law. The judge doesn't decide the facts. You do.

14 We don't ask the Government to do that.  
15 We don't have professional jurors. We have folks  
16 just like you make this decision. And one of the  
17 reasons you do that is for justice, and a part of  
18 justice is protection, protection from Government  
19 overreaching, protection from a situation just like  
20 this. Because you can say with your verdict on Rudy  
21 Perez that we're not going to let Mario Rodriguez  
22 get a lesser sentence, we're not going to let the  
23 man who took advantage of Mr. Perez, who rolled over  
24 him, who put the spotlight on him by taking away the  
25 piece from his walker without ever telling him what

1 was going on -- we're not going to let that person  
2 get a lesser sentence with our verdict for Mr.  
3 Perez.

4 I think that's something that you want to  
5 think about. When you're thinking about reasonable  
6 doubt, I like to say, is there something that would  
7 make you hesitate, might make you pause?

8 I think this is something that ought to  
9 make you hesitate and make you pause. Mario  
10 Rodriguez is the only evidence about what happened  
11 in that cell. In your verdict against Mr. Perez --  
12 he's counting on that verdict so he can get out of  
13 prison sooner, so he can be out in the community.  
14 Is that what we want? We want Mario Rodriguez out  
15 in the community?

16 Now let's talk about Billy Cordova, and  
17 I'm going to get into this. I know I'm up here  
18 talking and you think you're going to get out of a  
19 PowerPoint. You're not. I'm sorry. But I wanted  
20 to make some of these key points.

21 Billy Cordova, in the very beginning of  
22 his testimony, told you how he exploits the system;  
23 right? He exploits it over and over again, so much  
24 so that when we ultimately get to the bottom line,  
25 he testified falsely under oath to Judge Browning in

1 a hearing in December. That's how far Mr. Cordova  
2 is willing to go to manipulate the system. He  
3 manipulated the system when he was at MDC, the jail  
4 in Albuquerque, the first time. Remember, he got  
5 keys from the guard, assaulted the guard, got the  
6 keys to open the door, because there was guy in  
7 there he was after, and he beat up this guy and ends  
8 up with a misdemeanor conviction. And he says,  
9 "Well, we manipulated the system, my lawyer and I  
10 did."

11 That's how he got that little misdemeanor  
12 conviction. And when we talked to Billy Cordova  
13 about the sex that he had with his wife, he said,  
14 "Well, I saw weaknesses in the system and I  
15 exploited them."

16 Now, look, ladies and gentlemen, someone  
17 in prison wants to have sex with their wife, it's  
18 hard for me to take a major issue with that. But he  
19 did it in front of his children. That's the  
20 weakness he was exploiting, his children being in  
21 the room. He was counting on the prison guards and  
22 the COs not going in there to look and see what's  
23 going on because his kids are in there.

24 That's the type of manipulator we're  
25 talking about. That's who we're dealing with. And



1 Billy Cordova got placed next to his cell -- let's  
2 look at Defendants' Exhibit Q, the video of the  
3 cells. So Billy Cordova, if you remember, is Q102  
4 and Rudy is in Q101. Rudy is all the way over at  
5 the corner, so he doesn't have anyone else to talk  
6 to except Billy Cordova.

7 And these cells were very, very small. I  
8 know it was a while ago that we saw them, but you  
9 get a picture of the way these cells look right now.  
10 And remember the testimony. They're in these cells  
11 seven days a week, five of those days it's 23 hours  
12 a day. They get out for an hour for rec and then  
13 they get a shower. The other times, they aren't.

14 So they're in the cell all day long. They  
15 don't get out. There's no congregate housing. They  
16 don't get to come out in the pods like you saw with  
17 the Javier Molina time period, because that's Level  
18 4 down at Southern when they get to come out in the  
19 pod. In Level 6 you're in this cell the entire  
20 time, and you don't ever get out except for those  
21 periods -- those one hours five days a week.

22 So this is the time Mr. Perez is in here.  
23 And Billy Cordova comes along. Now, you haven't  
24 heard any evidence about who was next to Mr. Perez  
25 before, but what you have heard -- and thank you,

1 that's plenty -- you'll have this exhibit back with  
2 you in your deliberations. What you have heard is  
3 that Rudy Perez was taken to PNM in June of 2015 and  
4 placed in Level 6 solitary confinement.

5 Billy Cordova didn't get there until  
6 January 21, 2016, so almost seven months later. In  
7 the period before that time everybody in the SNM is  
8 locked down because of the Javier Molina homicide.  
9 Everybody. So 23 months of solitary confinement.  
10 And Billy Cordova is placed next to Rudy.

11 Now, remember, this is in February 2016.  
12 This is after the first round. They've already done  
13 the first round of indictments. Rudy has not been  
14 charged with any crime. He's just sitting there in  
15 solitary confinement and Billy Cordova is placed  
16 next to him, and Billy Cordova records him. And  
17 based on those conversations, Rudy Perez then gets  
18 indicted.

19 And Rudy is still under the same -- kind  
20 of the same baseline. You heard Dr. Brislen talk  
21 about that. The baseline is, he's still taking all  
22 these medications, he still has these walking  
23 problems, he's not one hundred percent there. And  
24 we didn't call Dr. Brislen to suggest that somehow  
25 Rudy was having a seizure when they had these

1 conversations or anything like what Ms. Armijo was  
2 trying to suggest to you in the cross-examination.  
3 We just want you to know what Rudy's state was like.  
4 He was neurologically unstable, he's medically in a  
5 fragile state, he's in the cell all the time, and  
6 master manipulator Billy Cordova comes to the cell  
7 next to him with one job, and that one job is to get  
8 Rudy to talk about the Molina homicide.

9 In exchange for that one job, Billy  
10 Cordova doesn't get charged with anything. That  
11 murder that Mr. Castellano talked about in his  
12 direct examination of the Los Carnales gang  
13 member -- you heard Mr. Castellano say you never  
14 really heard what came of that; right? They dumped  
15 the body on the steps.

16 We didn't hear what came of that because  
17 Billy Cordova got a get-out-of-jail-free card all  
18 because he was able to manipulate Rudy Perez. And  
19 remember, he's next to Rudy January 21. The  
20 recordings don't happen till February. He's got all  
21 that time to work on Rudy.

22 And the recordings -- you'll have access  
23 to those -- they start midstream, midsentence. They  
24 pick up conversations that have already occurred  
25 that you'll never get to hear. So you've got to ask

1 yourself what was going on during that period of  
2 time?

3 And then think about, again, what was Rudy  
4 doing? He was puffing. He was taking  
5 responsibility when he didn't do anything. I mean,  
6 he knew Mario Rodriguez had taken the piece from his  
7 walker. He knew that that was suspicious. He knew  
8 that they had questioned him about that right after  
9 the murder. And he knew that there were these  
10 rumors that he cooperated and that's how the  
11 Government knew that the pieces came from his  
12 walker. He knew all that 23 months later. So he's  
13 doing the only thing he knows how to do, which is to  
14 claim responsibility. "Yeah, I did what I was  
15 supposed to do and I kept quiet."

16 That's what he's doing with Billy Cordova.  
17 And I want to pause again here for a minute and  
18 let's think about this. Billy Cordova, the same guy  
19 who got up there and told you, "I would never brag  
20 about something I didn't do. I would never take  
21 responsibility for something I didn't do. I never  
22 told anybody I killed Sammy Chavez. I never told  
23 anybody that I killed Shane Dix."

24 And then we proved to you that he did just  
25 that. So the guy that's taking responsibility for

1 murders he doesn't commit gets a  
2 get-out-of-jail-free card because he records Rudy,  
3 who is doing the same thing.

4 Is it justice to convict Rudy Perez in  
5 that situation? No, it's not. You all are here  
6 because you took an oath. You took an oath to  
7 uphold the law, to carry out justice, and to judge  
8 each one of these men individually on their own  
9 merits; right? We talked about this in jury  
10 selection. I asked everybody: "If there is a  
11 situation where someone is in the same pod and  
12 different members of the group carry out a murder,  
13 can you still find someone not guilty?" That's Mr.  
14 Perez.

15 If they come and took something from his  
16 cell and used it in the murder but he didn't agree,  
17 can you find him not guilty? Well, that's Mr.  
18 Perez. And every one of you said, "Yes, I can do  
19 that."

20 So I'm going to hold you to your oath.  
21 I'm going to hold you to doing that.

22 I'll show you my PowerPoint and I'll try  
23 to get through it quickly. I think it summarizes  
24 some of the things that we talked about.

25 This is from Agent Acee on day 20 of trial

1 when Ms. Fox-Young was questioning him, I believe,  
2 but he said, "These guys have never stopped  
3 committing crimes."

4 He's talking about the Government  
5 witnesses when he said that. And who are the main  
6 Government witnesses in this case? The people who  
7 actually killed Javier Molina. And now they're  
8 trying to get a lesser sentence. They're hoping  
9 that you convict Rudy Perez so they can get a lesser  
10 sentence and keep doing what they're doing. And  
11 with your verdict you can stop that.

12 Agent Acee said -- and this is coming out  
13 of the meeting when they went to see Ronald Sanchez  
14 with Mario Rodriguez -- "We know half the people  
15 that talk to us are bullshitting, but we have to  
16 write it down anyway."

17 Well, if Agent Acee doesn't believe them,  
18 how can you believe them? And here are the folks  
19 that I would ask you to focus on in terms of Mr.  
20 Perez. So what do we know about these guys? People  
21 like Mario Rodriguez do what they want. They can  
22 run their own action. They don't have to follow  
23 orders or these rules that they told you about, and  
24 there isn't any loyalty. In fact, Mario Rodriguez  
25 said one of the reasons that he cooperated was

1 because he didn't think there was any loyalty.

2 But essentially what these Government  
3 witnesses have done is just formed a new gang and  
4 never stopped committing crimes. And the Government  
5 has let them get away with it, but you don't have  
6 to.

7 We talked about all of the benefits that  
8 these individuals are getting. Let's talk about  
9 Lupe Urquizo, one of the guys who was part of that  
10 meeting with Mario Rodriguez, Baby Rob, and Mauricio  
11 Varela that the first person to Southern takes care  
12 of it. He says that Rudy told him -- took  
13 responsibility in June 2015, again, 15 months after  
14 Molina's murder. Rudy is finally taken to PNM, he  
15 falls between the seats of the transport van. He's  
16 embarrassed. You know, this is the weakness that's  
17 not serving him very well in prison. And Urquizo  
18 says, he makes this statement. And remember  
19 Urquizo's sentence; right? I went through great  
20 pains with him on cross-examination. His state  
21 sentence that he still has to serve, the reason he's  
22 in prison, is going to be concurrent to his federal  
23 sentence, so they run at the same time. So if a  
24 verdict against Mr. Perez helps him get a reduced  
25 sentence, he's hoping he doesn't have to serve any

1 additional time over and above what he owes the  
2 State.

3 That's what he wants, ladies and  
4 gentlemen. I want you to think about it. The  
5 person who decided, long before he ever came to  
6 Southern New Mexico, that Javier Molina was going to  
7 get killed.

8 David Calbert. Now, think about that  
9 meeting that we talked so much about with David  
10 Calbert and Lupe Urquizo where they got to get their  
11 stories straight. And David Calbert says on August  
12 2, 2017, that Rudy bragged to him in Estancia,  
13 that's the Torrance County Detention Facility --  
14 that he was taking credit. And he says, yeah,  
15 because he was crips, like crippled, can't get  
16 around, so he wanted something to do, wanted to take  
17 credit.

18 So think about this statement in the  
19 context of: We know that Billy Cordova recorded the  
20 statements that he did. Those statements show up on  
21 the tablet. David Calbert, who has access to the  
22 tablet, and these other folks, as we get through  
23 them, know that that's sort of the reason Rudy is in  
24 this case; he's taken responsibility for something  
25 he didn't do. And so, of course, David Calbert says



1 that to you on the stand, because he wants to get a  
2 lesser sentence.

3 Now let's talk about Mario Rodriguez,  
4 Blue, the mastermind of this whole thing. Okay? He  
5 wanted to be a leader. The rape convictions  
6 jeopardized that for him. He says -- and this is  
7 written on Acee's 302, except Acee didn't want to  
8 adopt it as a 302 -- that he cooperates because the  
9 SNM was so fucked up and didn't have any loyalty.  
10 And of course he wants to avoid a life sentence.

11 And what I talked to you about before.  
12 Baby Rob, the guy he looked up to, was going to  
13 testify against him on Sosoya.

14 And remember the letter that Mario  
15 Rodriguez sent to Daniel Sanchez talking about a new  
16 identity. What a way for Mario Rodriguez to get out  
17 of this thing. He gets a lesser sentence and he  
18 gets a new identity that will, at least in his mind,  
19 clear him of the sex offense. I want you to think  
20 about that when you're thinking about Mario  
21 Rodriguez's testimony and whether you can believe  
22 it.

23 We talked about how he was in charge of  
24 the blue pod. And he wants out on the streets.  
25 Your verdict against Rudy, if it's guilty, that's

1 what he's hoping for that, will help him. Your  
2 verdict of not guilty will not help him.

3 We talked about some of the documents and  
4 FBI notes that we just obtained late in this trial,  
5 thousands of pages of miscellaneous paperwork for  
6 Mario Rodriguez where he talks about thriving off of  
7 fear, obsession that he has with biting and cutting  
8 off ears, butchery, rape, obsessing about his sex  
9 offense, and how he couldn't wait to kill Molina.  
10 And how Lupe Urquizo said -- and I'm sure it's based  
11 all back on that 2013 meeting -- that Mario  
12 Rodriguez couldn't wait to move on Javier Molina.  
13 And Mario Rodriguez -- if anybody -- of all that you  
14 heard from in this trial, nobody enjoyed killing  
15 Javier Molina more than Mario Rodriguez. He has a  
16 blood lust. And if you think that blood lust is  
17 going away when he gets out on the street, I think  
18 we're all in trouble.

19 So let's talk about Mario Rodriguez' time  
20 line. In 2013, while he's at PNM, he has the  
21 meeting with Lupe and Baby Rob and Mauricio Varela.  
22 Mario is the first one to get to Southern. Now,  
23 remember the phone call. He makes a phone call a  
24 week later to Lupe Urquizo's brother; right?  
25 Because he's anxious. He wants Lupe to get down

1 here, he wants to kill Javier Molina.

2 Between the period of March 6 and March 7,  
3 Mario orchestrates the entire hit. He does  
4 everything. He gets all the players in place. He  
5 tells all the players what they're going to do. He  
6 takes the piece from Rudy's walker. He makes the  
7 shanks and he gives them to the Jerrys to execute  
8 the killing and he tells Timothy Martinez what he's  
9 going to do.

10 And then Mario, after the fact -- by the  
11 way, he's coaching them the entire time standing up  
12 there. He testified that, you know, "I volunteered  
13 and Dan told me no." Well, of course he's  
14 testifying about Dan Sanchez, because he wants a  
15 verdict against Dan Sanchez so he can get out on the  
16 streets sooner. But he's saying that because that's  
17 what the Government wants. You don't have any  
18 evidence whatsoever about that, because Mario did  
19 everything.

20 If Mario was told not to volunteer, not to  
21 help, boy, that sure doesn't square with the  
22 evidence, because Mario did everything and he  
23 coached them from start to finish. Because remember  
24 what he told you about this. I jumped the gun just  
25 a little bit there. Mario -- not only did he put

1 everybody in play, but he goes upstairs when Timothy  
2 Martinez is supposed to choke out Javier Molina;  
3 right? I mean, Mario is supposed to not be  
4 volunteering for this thing. That doesn't make  
5 sense. He's in the room. Not only is he in the  
6 room; he holds Javier Molina's arms so Timothy  
7 Martinez can strangle him. And then he signals to  
8 the Jerrys, Mario Rodriguez does, to have the Jerrys  
9 come over and start stabbing him. And then he  
10 stands there and watches.

11 I showed you that part on the video. He  
12 jumps on the rail and watches, because he can't get  
13 enough of this. And when Javier Molina starts to  
14 come to, Mario Rodriguez says, "Get him. Don't let  
15 him out of the cell."

16 And when Javier Molina gets out of the  
17 cell and runs down the stairs, he tells the Jerrys,  
18 "Get him." And he tells Javier Molina his last  
19 words. "You're no carnal."

20 Mario Rodriguez did everything. How  
21 perverse a sense of justice does the Government have  
22 that they want you to convict Rudy Perez so Mario  
23 Rodriguez can get out on the street. And after  
24 Mario is charged with Sosoya and Molina, before he  
25 cooperates, remember that letter that he wrote to

1 Roy Martinez? You know, the other leader, the other  
2 big homie, saying, "We're going to rebuild the SNM.  
3 Don't take a plea. Don't do it."

4 Mario still had this idea in his head.  
5 But then Timothy Martinez and Baby Rob -- they  
6 cooperate with the Government. And on October 24,  
7 Mario, one week before the Sosoya trial, he decides  
8 to go to work for the Government. And he says on  
9 that interview that Rudy was scared when Mario came  
10 to take the walker piece. And he gets a chance --  
11 he says that to Agent Stemo. Agent Stemo prepares a  
12 report, and a week later Mario, on November 1st,  
13 gets to review Agent Stemo's report and clarify any  
14 of the details that he wants to clarify. But he  
15 doesn't change his statement about Rudy being  
16 scared. He doesn't say that that was wrong, that  
17 that was incorrect.

18 And then he meets with Agent Stemo -- this  
19 trial has already started; this is February 3,  
20 2018 -- and Ms. Armijo. And he still doesn't change  
21 his story about being feared. There's no reports,  
22 there's no nothing, and Agent Stemo told you that  
23 Mario Rodriguez didn't change his story. Then all  
24 of a sudden at trial he tries to change his story  
25 about Rudy being in fear. Because if Rudy's in

1 fear, Rudy didn't agree to anything. Because if  
2 Rudy is in fear, Rudy didn't have a choice.

3 And remember. Mario Rodriguez had Rudy's  
4 cell door open. This is what he testified to. So  
5 then he motioned for the door to be opened; right?  
6 Then the door is opened. And he says, "And what did  
7 you do?"

8 He said, "I took it off."

9 He said, "How did you take it off?"

10 He said, "Well, when Daniel Sanchez."

11 Again, where is the evidence that Daniel  
12 Sanchez was involved? He says Daniel Sanchez is  
13 standing by the door. Where is the video? Mr.  
14 Castellano just showed you a video. You can see Mr.  
15 Perez' cell off to the right. If Daniel Sanchez is  
16 there talking to him, where is that? There's no  
17 evidence of that except Mario Rodriguez. He's the  
18 only one that says that. But Mario Rodriguez says,  
19 "I opened the door."

20 So let's take some of what Mario Rodriguez  
21 says at face value. Rudy didn't open the door.  
22 Rudy didn't want him in there. Mario opened the  
23 door. And Mario takes the piece from the walker  
24 about 2:25 or 2:30, just three hours before the  
25 murder, and he says that "I get the walker and I put

1 it on the bunk, I tilt it sideways. I was trying to  
2 take the bolt off. I turned around to ask for nail  
3 clippers."

4 Again, zero evidence whatsoever that Mr.  
5 Sanchez is there. He was gone, he says. "I got  
6 some nail clippers. They were right there. I  
7 started taking it off. And Rudy tells me, 'I'm down  
8 whatever, as long as it's not me.'"

9 Well, if that's when the statement was  
10 made, doesn't the agreement have to occur before  
11 Mario Rodriguez takes the piece off? Rudy didn't  
12 have a choice at all. He's just telling Mario,  
13 "Don't kill me."

14 And then post Molina, you have these  
15 investigations that spark the concern for Rudy's  
16 safety. Warden Mulheron goes to the wheelchair  
17 program, right, because everybody thinks it came  
18 from the wheelchair program, and he doesn't think  
19 there is anything missing from the wheelchair  
20 program.

21 Then he remembers Rudy's walker. So he  
22 goes to see Rudy and he asks him about it. And  
23 unlike the previous times that Warden Mulheron has  
24 talked to Rudy, Rudy talked to him. Remember, I  
25 asked the warden. I said, "You talked to him

1 before."

2 He said, "Yeah."

3 "How were those conversations?"

4 "He usually didn't talk to me. He didn't  
5 say much. But this time he did."

6 And Rudy was unnerved and he was scared  
7 and he was worried. And remember, this is the  
8 witness, the warden of the penitentiary, of  
9 Southern, where this took place. That is the  
10 witness that Rudy Perez called. The Government  
11 didn't want you to hear this.

12 And after that conversation, the warden  
13 had the walker confiscated, and he was concerned  
14 about Rudy, and he wanted STIU Officer Holguin to  
15 interview Rudy, which he did, and Mr. Holguin had  
16 the same concerns for Rudy's safety. He prepares a  
17 memorandum of that and provided it to the New Mexico  
18 State Police. You heard him testify about that.

19 Remember way back in the beginning of  
20 trial, Jerry Roark, the Deputy Secretary of  
21 Corrections, testified that there was this  
22 investigation about it. And we know from the facts  
23 that Rudy was never, ever returned to congregate  
24 housing. He stayed in solitary confinement the  
25 entire time, well past -- you can read his location



1 history, Exhibit V-24, he stayed in solitary  
2 confinement until he was arrested by the federal  
3 government in this case.

4 And what did the United States admit to?  
5 Mr. Castellano told you this in his closing  
6 argument. This is an admission, ladies and  
7 gentlemen, and you can treat it that way. This is a  
8 document filed by the prosecutors that said after  
9 Mr. Perez was done in the Penitentiary of New Mexico  
10 for this disciplinary sanction, he was not  
11 transferred back to SNMCF -- that's Southern New  
12 Mexico Correctional Facility -- due to safety  
13 concerns that the facility had for him.

14 Mr. Castellano said, "Well, we called  
15 Wendy Perez to talk about that."

16 Wendy Perez is from the Penitentiary of  
17 New Mexico, from Santa Fe. She didn't know anything  
18 about threats to Mr. Perez in Southern. She didn't  
19 tell you she knew anything about it. We asked her  
20 specifically. She said, "No. I have to know some  
21 things to transfer."

22 But if there wasn't a threat, if there  
23 wasn't a safety concern for Rudy at Southern, you  
24 better believe you would have heard about it. You  
25 heard the exact opposite from the warden himself,

1 that there was a safety concern for Rudy.

2 And you heard from Timothy Martinez that  
3 there were rumors that Mr. Perez cooperated. Now,  
4 this is the point in time, in about 2015, in the  
5 fall at PNM, when Rudy had already been moved there,  
6 and right before Billy Cordova was placed next to  
7 him just at the turn of the year. And what Mr.  
8 Martinez says is a rumor like that could get Mr.  
9 Perez killed.

10 And that's the context in which you have  
11 to analyze Mr. Perez' statements to Billy Cordova.  
12 You can't look at those and say, "This is what  
13 happened in that cell when Mario Rodriguez took the  
14 piece from the walker."

15 What you've got to look at is what was  
16 really going on at the time of those statements.  
17 Because again, this is nearly two years after Molina  
18 died that Cordova recorded Rudy. Rudy had been  
19 there since June of 2015 in solitary confinement, 23  
20 hours a day lockdown. Rudy's wheelchair-bound when  
21 he gets out of his cell. Billy Cordova even  
22 remembered the wheelchair being outside of his cell.  
23 There's rumors that Rudy cooperated, and Cordova was  
24 Rudy's only neighbor. And Cordova admitted that he  
25 took advantage of those rumors to get Rudy to talk

1 about Javier Molina and recorded Rudy taking credit  
2 for something that he didn't do, just like Billy  
3 Cordova.

4 So you need to imagine -- you have to fill  
5 in the blanks, unfortunately, because we don't have  
6 recordings of all the conversations between Billy  
7 and Rudy. And Billy didn't have a recording device  
8 until February. What else took place during those  
9 conversations? Were these guys boasting to each  
10 other? Were they bragging to each other? Billy  
11 Cordova's purpose was much different. But Rudy's  
12 was self-preservation. He was trying to get the  
13 word out that he didn't talk about it, that he  
14 didn't cooperate, and that he did his part. Because  
15 if he's involved and he did a part, then, of course,  
16 he's not going to incriminate himself.

17 Billy Cordova. No question he took credit  
18 for murders that he didn't participate in. Shane  
19 Dix. We had Benjie Montana testify, and Eric Duran  
20 testified to it, too, that Billy told them he killed  
21 Shane Dix. And he testified on the stand, Billy  
22 did, that he didn't kill Shane Dix and he didn't  
23 brag about it. And Acee testified that there was no  
24 evidence that Billy was there.

25 So the point of this, ladies and

1 gentlemen, we're not trying to prove Billy Cordova  
2 killed Shane Dix. We're proving two things. One,  
3 that Billy Cordova lied to you when he told you that  
4 he didn't brag about killing Shane Dix. And two,  
5 that people take credit for things they don't do.

6 And of course, you can imagine why that  
7 would happen in prison in this setting. And that's  
8 the same thing that Rudy was doing. And when we get  
9 into the actual statements, sure, there are points  
10 when Rudy is taking responsibility for some of the  
11 things, but there's other points in the statements  
12 where he's not. So what you have with the  
13 statements that Rudy gave to Billy Cordova is a  
14 mixed bag. And it's a mixed bag that doesn't help  
15 you resolve what happened in those moments when  
16 Mario Rodriguez took the piece from Rudy's walker  
17 because that's the only time Rudy ever did or could  
18 have ever done anything.

19 Then, of course, Sammy Chavez. We called  
20 the Government's own cooperating witness, Benjamin  
21 Clark, to testify that Billy Cordova made him  
22 believe that he had killed Sammy Chavez. And you  
23 heard from Agent Acee, these other individuals, Rob  
24 Martinez, Baby Rob, Fred Quintana, Sammy Griego.  
25 All said that Billy bragged to them that he killed

1 Sammy Chavez.

2 But Sammy Chavez was killed on the street  
3 and Billy was in custody at the time. So again, the  
4 Government's main witness, the Government's -- the  
5 guy who got a free ticket, who didn't get indicted,  
6 takes responsibility for things he didn't do and  
7 he's not prosecuted for them. Why should Rudy be  
8 convicted for taking responsibility for something he  
9 didn't do?

10 You heard from Mr. Cordova. I talked  
11 about this already at pretty great length. He  
12 murdered the Los Carnales, remember, and dumped his  
13 body in a church. He was convicted of killing -- he  
14 was convicted of manslaughter for Ray Gurule.  
15 Severe domestic violence on his wife, Crystal. The  
16 same wife, by the way, that the Department of  
17 Corrections let come have contact visits with him  
18 when normally they're not allowed contact visits.

19 Received \$950 in payments and expenses,  
20 and the cash money was put on his books, and he used  
21 the money on his books to get drugs, the drugs that  
22 he didn't tell Judge Browning he took in December  
23 when Billy Cordova took the stand and took the same  
24 oath, but then admitted that he had taken drugs just  
25 two weeks before that hearing in December. Again,

1 someone who is willing to manipulate so much so that  
2 he wouldn't disclose the truth to Judge Browning.

3 And he testified at that same hearing that  
4 the SNM was going to move on Rudy, move on him, hit  
5 him; they were going to come after him. And he  
6 changed that testimony at trial. Why did he change  
7 that testimony at trial? Because he knows it  
8 doesn't help him. He knows it's not good. If Rudy  
9 was going to get hit, then, of course, Rudy is going  
10 to talk out of fear and self-preservation. And so  
11 he changes his testimony at trial, and he's never  
12 been charged federally for any of his admitted  
13 violent crimes and he wants it to stay that way.  
14 That's why he changed his testimony. Do you think  
15 the Government is going to prosecute him for  
16 perjuring himself? I doubt it. But you can send a  
17 message with your verdict to the Government that  
18 you're not going to put up with that.

19 So I'll run through the Billy Cordova time  
20 line. Meets with Acee in January of 2016, this is  
21 after the first roundup, and agrees to record Rudy  
22 Perez in exchange for not being charged with murder  
23 and racketeering.

24 And I asked Billy Cordova, "Were you  
25 threatened with a life sentence or the death penalty

1 at that point in time?"

2 And he said, "No."

3 And I played the phone call where he's  
4 explaining that to his wife, and he said, "Well, I  
5 lied to my wife."

6 So he lies to his wife. He lies under  
7 oath in December. Do you think he's going to tell  
8 you the truth? He's placed next to Rudy January 21.  
9 Doesn't get a recording device until February.  
10 Admitted that he used pressure points to get Rudy to  
11 talk about the Molina homicide. And then January of  
12 2017, Agent Acee closes him as a confidential human  
13 source, a CHS, because he got caught having sex with  
14 his wife in front of his children. But yet even  
15 though Mr. Castellano told you just a minute ago in  
16 his closing argument that they're not using these  
17 guys anymore when they get closed, you hear Cordova  
18 returns to work for the FBI and records an  
19 individual named Valdivia.

20 Now, Agent Stemo -- I'm sorry, the  
21 testimony was that, well, STIU asked them to do  
22 that. But they gave that evidence to Agent Stemo,  
23 and Agent Stemo wrote the report. So you know, come  
24 on, guys. The FBI is still using Billy Cordova  
25 despite all this.

1 Cordova testifies under oath in December  
2 that the SNM was going to move on Rudy and that he  
3 had not used any illegal drugs in a couple of years.  
4 And at trial he admits that he used drugs just two  
5 weeks before, December 12, 2017.

6 So let's talk a little bit about these  
7 recordings, because what I want to show you through  
8 these recordings -- and these are taken off of the  
9 transcripts -- is that Rudy never agreed to kill  
10 Molina. Okay? So Rudy is talking about -- Billy  
11 Cordova is talking about it here. "Hey, carnal.  
12 When -- who did that, carnal? Who got the shanks  
13 from your walker? You know what I mean? To make  
14 them -- to even send the carnals on a mission like  
15 that. That was fucking, you know what I mean, you  
16 think he -- I don't know, carnal. I trip out on the  
17 way everything went down, and you feel what I'm  
18 saying?"

19 And Rudy's saying -- he gets to the point  
20 where he's going to explain, and he says, "'Kay,  
21 watcher. They come to me and they're, like, look,  
22 big dog, something has to be taken care of. But we  
23 need 'squina. You don't have to nothing. You don't  
24 have to do nada. You don't have to do fuck. We  
25 just need that. You know what I'm saying? You



1 understand what I'm saying?"

2 And Mr. Cordova says, "They just need that  
3 piece from your walker?"

4 Rudy says, "After that I didn't know  
5 nothing, brother. And I -- I felt, okay, if I can't  
6 put in the work for the family, I got to be willing  
7 to do my part, no matter how little or how big."

8 The little part is what he's talking  
9 about. "I didn't say nothing. I didn't do  
10 nothing."

11 That's not an agreement to help  
12 participate in a murder, and he sure as heck isn't  
13 saying that he knew at the time what the point was.  
14 He didn't know about the paperwork. That is clear.  
15 Billy asked him, "Carnal, that vato, Javier Molina,  
16 yeah," and they're talking about Jesse Sosa, the guy  
17 he supposedly ratted on Molina. He says, "That's  
18 the paperwork they had. They used to hit that fool,  
19 huh?"

20 And Rudy says, "I don't know." Rudy says,  
21 "I don't know. I've never seen it. I hear about  
22 it."

23 Billy asked him, "You only hear about it."

24 And he says, "Yeah. Yeah. Because when I  
25 got over here" -- he's talking about PNM, where they

1 are right now, 23 months later -- "they were, like,  
2 no, fuck them. The other vatos should have already  
3 taken care of that."

4 They're talking about this supposed hit  
5 from the year before. Rudy never saw the paperwork.  
6 It's clear. Because Mario, of course, doesn't want  
7 to tell him anything when he goes to take that piece  
8 from his walker, and sure as heck isn't going to  
9 tell him about any paperwork.

10 Again, Rudy didn't see it. Rudy's talking  
11 about how they were sent on a suicide mission. And  
12 Rudy says, "Like I told you, mother fuckers were  
13 sent on a suicide mission."

14 Billy says, "Well, what if I already knew  
15 that?"

16 Rudy gets down here and says, "Okay, then,  
17 like I say, it's something we've all heard, but  
18 there's no proof about that. It just, you know, we  
19 did -- we have to consider that somebody was just  
20 hating, because there's no actual proof."

21 He's talking about the paperwork. There's  
22 no actual proof of the paperwork. It's just rumors.  
23 That's what Rudy thinks, 23 months later, that  
24 Javier Molina was killed based on that. And Rudy is  
25 saying, "But you understand my point here, brother."

1 You know what I mean. Rightfully done, if somebody  
2 kicked you like that, show me. Show me the  
3 paperwork. Don't tell me. Show me."

4 Rudy is telling Billy Cordova he never saw  
5 any paperwork, and it's all based on rumors. And  
6 here he's making clear that he really didn't agree.  
7 What did Javier have to do with that mess? He says,  
8 "I don't know, brother. I don't know. I mean,  
9 that's why I'm telling you. I'm like -- in a way I  
10 don't even want to know, dog. Because you know what  
11 I mean, so it -- it's just in my head, though. I'm  
12 always, like, what the fuck is with that? I don't  
13 ask nobody. I just -- I just keep my mouth shut and  
14 I just say -- thought about it, you know what I  
15 mean, and like I say, dog, that day I told them  
16 vatos not like -- think about that, and they  
17 basically told me, you know what? This is going to  
18 happen regardless. Just stay out of it."

19 So this is Rudy making himself bigger than  
20 what he really was. He was never told -- he was  
21 never given an opportunity, but he's telling Billy  
22 that he was. "I was given an opportunity and I told  
23 him, 'Don't do it.'"

24 This is Rudy saying he didn't agree with  
25 the way this happened. And again he says -- and

1 again, Cordova says, "But very few really know what  
2 happened. You know -- you know what I'm saying?"

3 And Rudy says, "And none of that was  
4 right, brother. Yes, it had to be done, but it sure  
5 as fuck didn't have to be done like that."

6 This is 23 months later. He can't tell  
7 Billy Cordova they shouldn't have killed Javier  
8 Molina, because Rudy is still trying to play the  
9 role of an SNMer trying not to get himself killed.  
10 But he's saying it was done all wrong.

11 Mr. Castellano told you that what Rudy  
12 says, though, they should have given him a hotshot,  
13 well, then, he's not agreeing that it could be done  
14 with his walker piece. This is reflecting on  
15 something that was happened 23 months later. And  
16 again, Rudy is talking about how he didn't agree.  
17 He's saying, "What the fuck are you all thinking?  
18 You feel me, like they just told me to shut up and  
19 just stay out of it, and they did what they wanted  
20 to do. And then later on, suicide mission was  
21 there."

22 And Billy asked him, "So why did you give  
23 those pieces, carnal?"

24 Rudy goes, "Huh?"

25 "Why did you give those pieces if you

1 didn't --

2 "What?"

3 "You should have just told them, fuck  
4 you."

5 Rudy says, "I just get out of it. Let  
6 them do their own -- do their own thing."

7 And Billy says, "Yeah, yeah. They used  
8 those as the fierros, as the shanks, you know what  
9 I'm saying? That shit could of gotten you, you  
10 know, where this is" --

11 But still, Billy is talking about how this  
12 gets Rudy into trouble. And Rudy is agreeing with  
13 that, saying, "I just stay out of it. I don't get a  
14 say."

15 And Rudy was angry. He's talking about  
16 how everybody has to do their part, homes. "I  
17 played my part. Everybody has to do their part."

18 And Billy says, "Yeah, I understand that.  
19 You're saying that because you're fucking angry,  
20 carnal. You're saying that because you're angry."

21 Well, yeah, Rudy is angry. Because he got  
22 dragged into this thing. He never agreed to do  
23 anything wrong. And again, the information about  
24 the prior hit, Rudy learns after the fact about  
25 everything. "I tell you, all that came out

1 afterwards. Because like I said" -- I can't read  
2 this here -- "they're just homies, you know what I  
3 mean? You just showed up some homies cool. Because  
4 other vatos, them fuckers is true, eh? That's  
5 why -- well, find out then what the truth came out.  
6 He's got the paperwork a year before. That's when  
7 he told me, hey, we got it, yes, but we're not going  
8 to show you. So just make sure you show some love,  
9 no?"

10 All of this information Rudy learns after  
11 the fact. Remember, what everybody has said,  
12 they're talking about the Molina homicide from the  
13 time it happened until the time Rudy gets recorded.  
14 So he knows all this information after the fact.  
15 And he doesn't have any influence in the SNM. He's  
16 told to say quiet and stay out of the way. "But  
17 hey", he says, "but you know, hey, I'm nobody. I  
18 keep right in the back and I keep my mouth shut the  
19 way I'm supposed to, and if I'm needed for  
20 something, they will bring to it my attention and  
21 I'll do my part. But if it don't concern me,  
22 Molina, whatever they got going is their business.  
23 You know what I mean?

24 And again, his part is to stay quiet.  
25 Right at the bottom, "I'm from the old school. I

1 got schooled right, homes. When they took my  
2 property and they said, 'You better stay quiet,' I  
3 didn't see them. I know nothing. I was my room. I  
4 don't know what the fuck you're talking about.  
5 Boom. And that's been my statement all along."

6 He's saying his job was to be quiet. It  
7 isn't a crime to be quiet. It's not an agreement to  
8 commit murder if you're quiet. The person who did  
9 agree, the person who did have a choice, was Timothy  
10 Martinez. Timothy Martinez had a choice, and he  
11 knew what the object was. When he was told what he  
12 had to do, he was fully capable of stopping it. He  
13 was a former Marine, he liked to do MMA, but he  
14 chose to do it anyway, right? Because he wanted  
15 that tattoo. Didn't matter that Javier Molina was  
16 his friend, but that's what he did. And then, like  
17 everybody else, Timothy Martinez comes up with this  
18 statement, right before trial, that Rudy took  
19 responsibility.

20 And why did he do that? His first initial  
21 debrief was right after he got out of the Torrance  
22 County Detention Center. He doesn't say anything at  
23 all. That's when he was with Rudy. He doesn't say  
24 anything at all about Rudy saying anything to him.  
25 All of a sudden at trial he decides Rudy made that

1 statement. Why did he do that? Because he wants  
2 your verdict against Rudy to help him get out.

3 We talked about some of the benefits Mr.  
4 Martinez killed. You guys heard those ad nauseam.  
5 I'm going to run through some of these because I'm  
6 getting short on my time here.

7 Jerry Armenta. He had a choice. He made  
8 an agreement; right? You heard his testimony that  
9 Armenta was supposedly 47 days or 45 days to getting  
10 out. Well, he had a choice. He didn't have to go  
11 in there and stab Molina. He could have done  
12 something. He could have said no. Does that put  
13 him at risk? Well, sure. But he was given the  
14 choice and when given the choice, he agreed.

15 Rudy never had a choice.

16 Jerry Montoya. You heard from Ms. Duncan  
17 a lot about Mr. Montoya, so I won't go through  
18 everything here. But Jerry Montoya had a choice.  
19 He says he went with Jerry Armenta and said, "It's  
20 us or him."

21 Well, they had a choice. They could have  
22 stopped Mario Rodriguez, but they didn't. Rudy  
23 Perez couldn't have done it. He was physically  
24 incapable.

25 Jerry Montoya admitted that he knew Mario



1 could move on him and anybody could move on him on  
2 his own accord. It doesn't take an order. It  
3 doesn't take Dan Sanchez or Anthony Baca. All it  
4 takes is Mario Rodriguez, right? If that's their  
5 truth, then they can move on you and something bad  
6 could happen. The only truth Jerry Montoya knew is  
7 what Mario Rodriguez told them to do. And Mario  
8 Rodriguez gave him the shank, and then if he didn't,  
9 he was afraid of Mario Rodriguez.

10 So we talked about Rudy's health  
11 conditions and it's all in Rudy's medical history.  
12 But under those circumstances, he didn't have a  
13 choice. He couldn't stop Mario. That's not an  
14 agreement to break the law. And because of that,  
15 Rudy Perez isn't guilty of either Count 6 or Count  
16 7, and I just want to show you real quick, and then  
17 I'll be done, the jury instructions that concern  
18 that. So I'm going to switch over to the Elmo and  
19 talk to you about the elements.

20 This is instruction number 24. You guys  
21 are all going to get copies of these in the back.  
22 There's five elements, and the only element you've  
23 got to worry about for Mr. Perez is the fourth. Did  
24 he conspire to murder Javier Molina? Did he murder  
25 Javier Molina?

1           He didn't do any of those things. How do  
2 we know? The instruction for murder, there's two of  
3 them: First-degree murder is, the defendant killed  
4 Mr. Molina. Well, you know Rudy Perez didn't kill  
5 Javier Molina, so you don't have to worry about that  
6 one.

7           The instruction for second-degree murder,  
8 jury instruction 28. The defendant killed  
9 Mr. Molina. Rudy Perez didn't kill Mr. Molina. So  
10 he's not guilty of Count 7 for actually killing Mr.  
11 Molina.

12           What the Government will argue is under  
13 the aiding and abetting instruction to Count 7 for  
14 murder is that Mr. Perez intentionally associated  
15 himself in some way with the crime and intentionally  
16 participated in it as he would something that he  
17 wished to bring about.

18           But here's the key. Mr. Perez consciously  
19 shared the other person's knowledge of the  
20 underlying criminal act and intended to help him.  
21 There is no evidence that when Mario took that  
22 piece, that Rudy knew what it was for. And if there  
23 isn't any evidence of that, you cannot convict him  
24 as an aider and abetter. The general suspicion is  
25 not enough. Mere presence at the crime scene is not

1 enough. You have to find that Mr. Perez knew what  
2 Mr. Rodriguez was up to, and there isn't any  
3 evidence of that.

4 That's Count 7, ladies and gentlemen, so I  
5 ask you to find Mr. Perez not guilty of Count 7.

6 Count 6 is the conspiracy, and the  
7 conspiracy is the agreement. That's jury  
8 instruction number 29. A conspiracy is agreement  
9 between two or more people to accomplish an unlawful  
10 purpose. And the first part of that is: Mr. Perez  
11 and another person, by words or acts, agreed  
12 together to commit murder.

13 There was no evidence that Rudy knew what  
14 that piece of his walker was for on March 7, 2014.  
15 Did he know two years later? Sure. Everybody knew.  
16 But the Government has to prove that he knew it at  
17 the time he entered the agreement, and they didn't  
18 prove that.

19 And number 2, Mr. Perez and the other  
20 person intended to commit murder. How can he have  
21 that intent if he doesn't know what Mario Rodriguez  
22 is up to? Mario took great pains to keep that  
23 information from everybody, from Timothy Martinez.  
24 Even Jerry Montoya and Jerry Armenta, they didn't  
25 get the shanks until sometime after he took them

1 from Rudy Perez, and that's when Mario told them  
2 what to do.

3           There is no reason Mario had to tell Rudy  
4 anything, because Rudy was not a problem. He was  
5 going to stay in his cell, he was weak, he was sick.  
6 There was nothing he could do to stop Mario  
7 Rodriguez. Mario Rodriguez knew that, and so there  
8 is no reason whatsoever for Mario to have told Rudy  
9 that at the time he took the piece. And so when you  
10 get the jury verdict for Mr. Perez, Count 6 and  
11 Count 7, I'm going to ask you to write "not guilty"  
12 as to both of those.

13           THE COURT: Thank you, Mr. Villa.

14           I think we had better take a break; right?  
15 Do you agree.

16           MS. BHALLA: Yes, Your Honor.

17           THE COURT: All right. I'm going to  
18 remind you of a few things that are especially  
19 important. Until the trial is completed, you're not  
20 to discuss this case with anyone, whether it's  
21 members of your family, people involved in the  
22 trial, or anyone else. That includes your fellow  
23 jurors.

24           If anyone approaches you and tries to  
25 discuss the trial with you, please let me know about

1 it immediately.

2 Also, you must not read or listen to any  
3 news reports of the trial. Don't get on the  
4 internet and do any research for purposes of this  
5 case.

6 And finally, remember that you must not  
7 talk about anything with any person who is involved  
8 in the trial, even if it doesn't have anything to do  
9 with the trial.

10 If you need to speak with me, simply give  
11 a note to one of the court security officers, Ms.  
12 Standridge.

13 Again, I'm probably going to keep  
14 repeating these as we bring this trial to a  
15 conclusion so be patient with me.

16 We'll be in recess for about 15 minutes.  
17 All rise.

18 (The jury left the courtroom.)

19 THE COURT: When the jury came in before  
20 Mr. Villa began his closing argument, I received a  
21 note from juror number 16, Ramona Becker, who is  
22 three in the back. She said, "On March 5, 2018, at  
23 approximately 11:55, I received a call and voice  
24 mail from Danny Yantz, Y-A-N-T-Z. Works in Las  
25 Cruces for New Mexico District Court as a computer

1 tech. I haven't spoken to Mr. Yantz in almost eight  
2 years. The voice mail was short, 0:09, so about  
3 nine seconds, and just asked me to call him back  
4 regarding a couple of things. Phone number (575),  
5 202-1965. I did not call him back or text him.  
6 Ramona Becker."

7           Seems like the juror did the right thing,  
8 and unless y'all tell me y'all know something about  
9 Mr. Yantz that I don't know -- I don't think I've  
10 heard his name -- I think we ought to just keep  
11 moving. But y'all tell me if you think otherwise.  
12 I'll ask Ms. Standridge to mark that as Exhibit Y to  
13 her clerk's minutes, and unless y'all tell me  
14 otherwise, we'll just keep moving.

15           All right. We'll be in recess for about  
16 15 minutes.

17           (The Court stood in recess.)

18           THE COURT: All right. We'll go on the  
19 record.

20           Ms. Standridge had talked to you. The  
21 physical evidence will go in to the jury. I  
22 understand everybody has agreed to that. I think  
23 it's a shank and a gun. The gun looks like there is  
24 some sort of lock or device on it. So I think  
25 everybody is in agreement. Let me know if there is

1 anybody that's objecting to it. But she told me  
2 that everybody agreed.

3 I'm thinking that we will take a break  
4 after Ms. Bhalla. Ms. Jacks, does that sound right,  
5 given what you had estimated your length was?

6 MS. JACKS: I think that's probably right.  
7 I think the concern -- I don't know how long this  
8 argument is going to be, but mine is probably at  
9 least an hour. So I don't know if the Court is  
10 going to interrupt mine and go to tomorrow, or if  
11 we're just going to power through it and power  
12 through the Government's rebuttal.

13 THE COURT: Well, there are several ways  
14 we could do it, and you be thinking about what you  
15 want to do after we see where Ms. Bhalla is. But  
16 I'll take a break. I'll do that. And then we can  
17 talk about it.

18 We can either -- you can either start it  
19 and we take a break at 5:30 and you can continue it  
20 the next day. If there is not enough time for you  
21 to get it in today, then I guess we can start it in  
22 the morning, if you'd prefer that. Or if you'd like  
23 to just get yours done today, I'll keep everybody  
24 around to get it done. So those are sort of three  
25 options. There may be others, but those are the

1 three I can think of. So let me know when you get  
2 to that point.

3 MS. JACKS: Okay. Thank you.

4 THE COURT: All right. Anything else we  
5 need to raise from the Government's standpoint? Any  
6 other defendants have any issues?

7 All rise.

8 (The jury entered the courtroom.)

9 THE COURT: Everyone be seated.

10 All right, Ms. Bhalla, do you have a  
11 closing argument on behalf of Mr. Herrera?

12 MS. BHALLA: I do, Your Honor. Thank you.  
13 May it please the Court.

14 THE COURT: Ms. Bhalla.

15 MS. BHALLA: Good afternoon. I want to  
16 thank you all for your time and your attention. It  
17 means a lot to me. It means a lot to our team, and  
18 it means a lot to Carlos Herrera, so we appreciate  
19 that.

20 I know this hasn't an easy case, and I  
21 don't think it's a case that anybody particularly  
22 wants to sit on. It's not fun to hear about  
23 murders, it's not fun to hear about prison, and it's  
24 a difficult topic; right? It's rough. And one of  
25 the things that we talked to you all about in voir



1 dire a lot was that you were going to have to deal  
2 with this issue; right? And you were going to have  
3 to deal with the fact that Carlos Herrera is a gang  
4 member. But that doesn't make him guilty of  
5 murdering Javier Molina, and it doesn't make him  
6 guilty of conspiring to murder Javier Molina.

7 And the Government has put on a lot of  
8 witnesses, and I think it's safe to say that none of  
9 us want to run into any of those witnesses at our  
10 local grocery store. I mean, I wouldn't.

11 And the temptation in this case, the thing  
12 that seems easy to do, right, is to go back there  
13 and say, "You know what? We heard about murder  
14 after murder, assault after assault, conspiracy  
15 after conspiracy. Carlos is in prison. He's an SNM  
16 member. That's enough. He's guilty by  
17 association."

18 That's an easy thing to do. But you all  
19 promised that you weren't going to do that, and that  
20 you were going to take apart these facts and you  
21 were going to look at the witnesses and you were  
22 going to make determinations about what you needed  
23 to do in this case. And I'm going to ask you to  
24 keep that promise, even though it's something that's  
25 hard to do.

1           The Government has spent some time in  
2           their case trying to prove to you that Carlos was  
3           some sort of a leader in the yellow pod. And I  
4           don't know and I don't think that they've met that  
5           burden at all, and we'll talk about that when we go  
6           through the witnesses.

7           But I think the thing I want y'all to  
8           realize about that is: It doesn't matter what his  
9           position in the SNM was. It's a red herring. What  
10          matters is that he didn't conspire to kill Javier  
11          Molina and he didn't kill Javier Molina.

12          Let's just say the Government -- you do  
13          think maybe he was a leader. Being a leader doesn't  
14          make you guilty of murder. That's not enough. That  
15          doesn't cut it. So whether you believe he was a  
16          leader or you don't believe he was a leader is not  
17          the issue in this case. The issue is whether or not  
18          he was involved in the murder.

19          I also want to talk to you a little bit  
20          about reasonable doubt. I think it's one of those  
21          academic concepts. It's difficult to talk about and  
22          it's difficult to understand when you're looking at  
23          witnesses and trying to assess their credibility.  
24          It's sort of difficult to understand what reasonable  
25          doubt really means; right? It's not easy for me,

1 and I've tried plenty of cases and I still have a  
2 hard time explaining it.

3 But I think you have to take it in the  
4 context of how it would work in your everyday life.  
5 Let's say you want to buy a house. Okay? And Mario  
6 Rodriguez is the real estate agent. Are you going  
7 to rely on the representations that he makes to you  
8 about whether or not that house passed inspection?  
9 Are you going to say, "Hey, you know what, dude, I  
10 want to see the inspection report and I want to talk  
11 to the inspector."

12 Right? What about, you know, Jerry  
13 Armenta? Are you going to buy a car from him when  
14 he tells that you it's in good working order?

15 Billy Cordova. Are you going to trust him  
16 to be the executor of your estate?

17 And those are sort of everyday analogies  
18 that you can look at and say, "You know, I wouldn't  
19 trust that guy to be truthful about that."

20 This is even more serious. Carlos is  
21 sitting there charged with murder. It's more  
22 important than a house. It's more important than a  
23 car. It's more important than a business. And they  
24 want you to trust what these men have sat in here  
25 and told you for the last month, and to base your

1 conviction on that for murder.

2           There is no way you can listen to any of  
3 them and not have a reasonable doubt about the truth  
4 of what they tell you. And I want you to go back  
5 there -- and you can't just say, "Well, Lupe said  
6 this, and Billy said this, and so-and-so said this.  
7 It doesn't really match, but it sort of kind of goes  
8 together, so maybe they're telling the truth."

9           That's not how it works. You've got go  
10 back in there and you've got to look at the  
11 testimony of Lupe Urquizo, and you've got to say to  
12 yourself, is Lupe Urquizo telling me the truth,  
13 separate and apart from what anyone else has said on  
14 this witness stand or in this courthouse?

15           That's the job that you have to do. And  
16 when we're talking about reasonable doubt, I want to  
17 talk to you about some of the evidence that's come  
18 out regarding Carlos in this trial that should cause  
19 serious doubts about why he's even here.

20           Roy Martinez. We've talked about him a  
21 little bit, I think. This is a guy who has got four  
22 decades of SNM membership. He began cooperating in  
23 December of 2015. Javier Molina was murdered in  
24 March of 2014. And what does he take -- I submit  
25 that I thought he was one of the more credible

1 witnesses on the stand, but what's the first thing  
2 he does when he meets with the federal government in  
3 December of 2015? He warns them, "Hey, you guys  
4 want information on the Javier Molina murder;  
5 right?"

6 "Yeah."

7 "Well, watch out because Carlos is next.  
8 They're coming after him."

9 And why are they coming after him? He  
10 didn't do his part. He didn't do what he was  
11 supposed to do. He didn't do his job. He's next.  
12 Didn't follow orders. So we've got a government  
13 witness hitting the stand, telling us that not only  
14 did Carlos not participate, Carlos is going to get  
15 murdered for his refusal to participate. That's the  
16 rumor going around the SNM, at least in December of  
17 2015. Yet they charge him; right? They charge him.

18 And what else did he do after becoming a  
19 Government cooperator? You know, witness after  
20 witness has said, when you cooperate, you get  
21 killed. When you cooperate, you get killed. I  
22 mean, I'm not trying to be flip, but there are a lot  
23 of witnesses who are on the stand that have been  
24 participating for a really long time, and they're  
25 all here. You didn't hear evidence about anybody

1 getting killed in this case for testifying. Okay?

2 A little blown up.

3 But as a cooperator he says to the prison  
4 officials and to the federal government, "Put me  
5 next to Carlos, will you? Because I know Carlos  
6 won't try to kill me, like everybody else."

7 So as a cooperator, someone who is  
8 supposed to be automatically killed, he's saying,  
9 "Send me to this guy because he doesn't do that kind  
10 of stuff."

11 I guess we shouldn't be surprised the  
12 Government didn't ask him about that on direct,  
13 because that doesn't help their theory of the case.  
14 And that's not the only one. Eric Duran hit the  
15 stand, too, said pretty much the same thing.

16 Now, obviously, I don't think Eric Duran  
17 is the classiest of guys, but the fact is: He comes  
18 in, he starts cooperating, and he does this in  
19 February of 2015. And you know, the Government  
20 tried to imply that, you know, the reason that they  
21 were going to kill Carlos was because he didn't  
22 participate, and the reason that he did participate  
23 was so he wouldn't be next. But that doesn't make  
24 any sense, because this all happens a year after the  
25 murder. If Carlos had participated in the murder

1 and the green light had been removed, there would be  
2 no reason to warn the Government that Carlos was  
3 next.

4 I want to switch gears a little bit and  
5 break out the testimony of some of the other  
6 informants. And I'm not going to try to belabor it.  
7 I think we did a pretty good job of impeaching those  
8 guys. But Lupe Urquizo is one of the first  
9 witnesses to implicate Carlos. And it sort of goes  
10 back to what Mr. Villa was saying about this twisted  
11 sense of justice. But Lupe Urquizo was charged with  
12 39 overt acts of racketeering. Thirty-nine. But  
13 the Government chooses to work with him and charge  
14 Carlos, who is only charged with two: The murder of  
15 Javier Molina and conspiracy to commit murder;  
16 right? That's it.

17 So his first meeting is in February of  
18 2017 and he, you know, sort of describes what that  
19 meeting was like. He'd gotten discovery, he read  
20 it, he knew he was up, they were coming after him  
21 for the RICO charges. He knew he needed to provide  
22 information and he needed to get himself out of the  
23 frying pan. And how do we know that part of that is  
24 true? Well, the phone calls; right? Oh, no. I  
25 mean, I asked him: "Didn't you tell your wife the

1 FBI wanted you to lie and they wanted you to snitch  
2 and they wanted you to turn evidence?"

3 "No, no, no. I never said that."

4 And we played a tape.

5 You know what? I'm getting confused with  
6 Billy Cordova. These guys' stories kind of run  
7 together sometimes.

8 It was Gerald Archuleta who had the  
9 information on Lupe Urquizo. I take that back. So  
10 Gerald Archuleta is the one who had him, right, in  
11 the hot seat. And we asked Lupe about that, and  
12 he's like, "no, no, no, I never made any of those  
13 representations."

14 And we play the phone calls. And lo and  
15 behold, Lupe is talking to his brother. "Hey,  
16 they've got recordings. I'm busted. I got to  
17 figure something out. I've got to cooperate. I'm  
18 in trouble." Right?

19 And they move him. And in that first  
20 debrief February 24, 2017, in that first debrief, he  
21 doesn't mention Carlos at all and he gets moved  
22 right away, and he gets moved next to Billy Cordova  
23 and Javier Rubio. And he stays there, and they  
24 bring him back a couple weeks later, after he's been  
25 housed with Billy Cordova and Javier Rubio, and all



1 of a sudden Carlos's name pops up, three years after  
2 the murder, and after the Government sent Billy  
3 Cordova to record Carlos because they wanted to get  
4 him for the murder; right? They wanted to see what  
5 they could get on him.

6 So everybody knew that's who the federal  
7 government was targeting. And this sort of  
8 incestuous relationship continues, because what does  
9 the Government do to protect the integrity of their  
10 investigation? They don't protect the integrity of  
11 the investigation at all. They put all these  
12 cooperators together. "We'll work with you. Here's  
13 your Kastigar letter. Here's your grant of  
14 immunity. Now, you go over here and live with these  
15 guys and we'll talk to you in a few weeks."

16 Is that the way you would want to get  
17 information? Is that the way to get credible  
18 evidence? I want to show you just a little chart.  
19 And it's not a PowerPoint. It's just one slide, but  
20 look at all the times these guys have been housed  
21 together, and look at the way the Government let  
22 them do that. Okay? And just think about that. So  
23 again, December of 2016, after they put Billy  
24 Cordova with Javier Rubio, Oh, yeah, yeah, yeah.  
25 Carlos had something to do with it. And isn't that

1 convenient.

2 Jerry Armenta. The first time that Jerry  
3 Armenta mentions Carlos Herrera in the context of  
4 this case is like two weeks before trial. And what  
5 does he say? "Oh, yeah. Carlos told me he did it.  
6 Oh, way back when, like right after the murder."

7 How long has he been a witness? Really?  
8 You saw Jerry Armenta kill Javier Molina on video.  
9 And you heard him testify about his role in that  
10 murder, and not once does he say, "I killed Javier  
11 Molina because Carlos told me to. I killed Javier  
12 Molina because Carlos approved." Not once, never.  
13 And don't forget, he's being housed with Billy  
14 Cordova, Mario Rodriguez, Javier Rubio, and David  
15 Calbert.

16 Billy Cordova. The first debrief of Billy  
17 Cordova is on January 4 of 2016, and it's four hours  
18 long, and they give him the same Kastigar letter  
19 they've gotten everybody else. And what does Billy  
20 say about this? "If I didn't give them information  
21 on the Molina murder, they had no reason to work  
22 with me; right?"

23 And the Government's objective was to take  
24 out everybody in the SNM; right? And they had the  
25 people on video who committed the murder; right? It

1 was obvious. So you can't just say, "Oh, yeah,  
2 those guys did it." It doesn't get you anything.  
3 It doesn't get you anywhere. So they tell him,  
4 "We're coming at you."

5 And I think one of the things that stuck  
6 out to me the most with Billy Cordova is that he was  
7 being actively investigated for three homicides. He  
8 doesn't get charged. And we asked Agent Acee about  
9 that, and what did he tell you? "That wasn't my  
10 decision. I wanted him to get charged."

11 And the attorneys for the federal  
12 government didn't agree, obviously. That's why  
13 we're all here. They wanted Billy Cordova's  
14 testimony and they would do it by any means  
15 necessary, including turning a blind eye to three  
16 murder investigations.

17 So they send Billy Cordova in to record  
18 Carlos, and they already sent Gerald Archuleta in;  
19 right? And Gerald Archuleta really didn't get  
20 anything. Talked about drugs. Talked about using  
21 drugs. That's not why Javier Molina's dead.

22 Carlos told him what he knew about the  
23 murder, and Gerald admitted everything Carlos told  
24 him was what he'd heard through the grapevine,  
25 because news travels fast and it's almost three

1 years after the murder. If we know one thing about  
2 people in the SNM, they like to talk a lot. They  
3 don't have anything else to do.

4 So that didn't work. So they send in  
5 Billy Cordova. And what does Billy Cordova say to  
6 him? And I'm going to use his words, so don't hold  
7 it against me. But his words are, "Hey, man,  
8 they're talking shit about you. They're talking  
9 shit." Javier was there for four years. What's  
10 going on? And who is he housed with before he went  
11 in to record Carlos to get that information? Eric  
12 Duran and Mario Rodriguez and Roy Martinez. And  
13 what do you think that meant? "Oh, you didn't do it  
14 fast enough?" Or -- I'm trying to remember what  
15 Billy Cordova's interpretation of it was. I don't  
16 really care what Billy Cordova's interpretation was,  
17 because he's a liar. But what he did was, he used  
18 the green light or the rumors of a green light  
19 against Carlos. Billy said it. "What happens when  
20 you leave a brother stranded on a mission? What  
21 happens when you don't participate in a murder?  
22 What happens when you're not down? You're next.  
23 You're on the chopping block."

24 And it's the same things. Billy Cordova  
25 could turn that thing on and off whenever he wanted.

1 We don't know what was said in the middle. But we  
2 know he told Carlos that people were talking about  
3 him and people were looking at him and people  
4 suspected that he didn't do his job. That's what  
5 that was about. And you think Carlos is going to  
6 go, "You know what, dude, you're right, like, I just  
7 didn't want to have anything to do with it. I  
8 didn't want to know"?

9 It's going to make him look weak and it's  
10 going to reinforce the rumors that are already out  
11 there. That's one of the things that we talked to  
12 you guys about in voir dire, in opening statements.  
13 That is a whole other reality. It's a whole other  
14 place to live. And the way that you think -- the  
15 way that we might want to react or think people  
16 should react doesn't work in prison. It's a totally  
17 different place. The last thing he's going to do is  
18 explain to Billy Cordova that he's a pacifist;  
19 right? That's not going to get anywhere.

20 And so Billy Cordova had a lot of fun on  
21 the stand trying to interpret everything that Carlos  
22 had to say in a way that was clearly beneficial to  
23 him; right? And why is that? "If I don't give them  
24 information on the Molina murder, they have no  
25 reason to work with me."

1 And we know he lies. He lied about the  
2 drugs, but he also lied about the FBI giving money  
3 to his wife. And he did that in December, right  
4 before this trial, under oath, when he swore to tell  
5 Judge Browning the truth. And when we played that  
6 phone call, y'all stepped outside and you came back  
7 in, and he admitted it. "Yeah, yeah, they did give  
8 her money, and yeah, I lied about it."

9 I want to move on to Mario Rodriguez. I  
10 think it's pretty obvious that Mario wanted to be a  
11 leader; right? He's just one of those guys. And he  
12 took advantage of people in situations in a way that  
13 benefited him. And Urquizo said, "Yeah, he wanted  
14 to be a leader. That's what he wanted to do."

15 And what's interesting about Mario  
16 Rodriguez is that he hates Carlos. Hates him. As  
17 recently as November of 2017, which is just a few  
18 months ago, he was going to murder him on the  
19 transport van. That's what he testified to. And he  
20 was going to get a sock or something like that and  
21 strangle him, and when they opened the van doors  
22 they were going to find a dead guy.

23 "Why didn't you like Carlos?"

24 He didn't fit in to Mario's picture of the  
25 SNM. He didn't put in work. He was lazy. He was

1 fat. Couldn't do a burpy, right, an exercise thing;  
2 right? He's lazy. He's lazy. He doesn't do shit  
3 for the SNM, he don't do anything. That's what he  
4 said. And now he gets his chance, sitting on the  
5 government witness stand, to take Carlos out because  
6 he didn't get the chance in the transport van. And  
7 the irony is that the real reason that he testified  
8 to, in addition to Carlos not fitting in the picture  
9 and not being the kind of guy they wanted in the  
10 SNM, is that the one time that Carlos did get  
11 paperwork on a murder, the guy's name was Stevens,  
12 what did Carlos do with it? He threw it away.  
13 That's why Mario wanted to kill him, because Carlos  
14 prevented Mario from killing somebody else.

15           These are the people the Government has  
16 chosen to work with in this case. I find it a  
17 little ironic that Ms. Armijo took every opportunity  
18 to point at my client and call him Lazy during  
19 trial, until Mario explained why he had that  
20 nickname. And suddenly they weren't calling him  
21 Lazy anymore. It doesn't fit in with their theory  
22 of the case as him being some leader authorizing  
23 paperwork and executing hits.

24           And Mario's testimony doesn't even make  
25 any sense. "I went to the door and said, 'Lazy, you

1 come over here and do what I tell you. You pass  
2 this.'"

3 Really? I mean, does that sound like  
4 Mario thinks Carlos is a leader? I don't believe  
5 that stuff about the paperwork. I think that's  
6 convenient for them, and they have had the  
7 opportunity to perfect that story, and they've spent  
8 a lot of time doing it. But it just doesn't even  
9 make sense for Mario to sit up here and say, "Yeah,  
10 Carlos was a leader, but he was also my errand boy"?

11 There's a lot of people who never, ever  
12 implicate Carlos in the Javier Molina murder. Jake  
13 Armijo, senior member, never discusses Carlos, never  
14 mentions him as being a leader. Jerry Montoya, one  
15 of the guys that committed the murder, never  
16 mentions Carlos. Doesn't that say something to you?  
17 The people who commit the murder never say to you,  
18 "I committed this murder because Carlos told me to,"  
19 because isn't that the Government's theory of the  
20 case? But you didn't hear that testimony, ever.  
21 Timothy Martinez, another murderer, never mentions  
22 Carlos.

23 Robert Martinez, another senior member,  
24 never implicates or testifies that Carlos had  
25 anything to do with it, but he does say something



1 very important. Robert Martinez, Lupe Urquizo, and  
2 Mario Rodriguez were the ones who came up with the  
3 plan, who came up with the idea to murder Javier  
4 Molina, and the first one that got to Southern  
5 needed to take care of business. Had nothing to do  
6 with paperwork. He was very up front about it.

7 It's just like Mr. Villa said. Mario gets  
8 down there, tries to convince Efrain Martinez to do  
9 the murder beforehand, when he's high on meth,  
10 according to his story, and Efrain is, like, "No  
11 way, dude. You're on your own. I'm not doing what  
12 you say."

13 Oh, guess what? He didn't get killed for  
14 that.

15 So then Lupe gets down and Mario is, like,  
16 "Oh, I've got to do this now. I'm the leader here.  
17 I got to be the big man on campus. I'm going to  
18 take care of business."

19 It has nothing to do with Carlos. Carlos  
20 wasn't part of that plan. He wasn't even there. I  
21 mean, he was in the yellow pod for at least a year  
22 before Javier Molina was murdered, and guess what?  
23 Javier Molina didn't get murdered until Mario  
24 Rodriguez shows up with Lupe Urquizo. But the  
25 Government decided to work with them and charge

1 Carlos, and that just makes me mad.

2 Robert Martinez also told you that there  
3 are lots of members who didn't earn their bones,  
4 that they were made members and allowed to do  
5 whatever because they brought in drugs. And the  
6 Government spent a lot of time talking to you about  
7 Carlos using drugs. You didn't hear any evidence  
8 about him killing other people or being involved in  
9 killing other people. Maybe Robert Martinez was  
10 right about that.

11 I can't tell you why some of the SNM  
12 members got on the Mario Rodriguez bandwagon and  
13 some of them didn't, but I do know that Mario has a  
14 personal beef with Carlos. And I think the evidence  
15 is pretty clear that Mario has been running the  
16 shots for a long time, and wants to, and wants to be  
17 a leader and wants to take charge.

18 And what have the federal cooperators done  
19 in terms of turning a new leaf? They've set up a  
20 new -- I don't know what you call it -- cooperator  
21 gang. I mean, I'm not trying to flip, but that's  
22 what they've done. They're running their own drug  
23 trade, they're breaking into their tablets, they're  
24 having sex in front of their kids, they're lying on  
25 the stand to get what they want, to increase their

1 status with the federal system by getting benefits.  
2 They're doing the same things.

3 And Mr. Castellano talked to you a little  
4 bit about how, oh, well, you know, this whole forged  
5 story in the state case between Armenta and Martinez  
6 and Mario -- that was in the state case. This is  
7 the federal case. What's the saying? "Fool me  
8 once, shame on you. Fool me twice, shame on me."

9 You think because this is federal court,  
10 they're not going to lie when they lied in state  
11 court? Are you kidding me? That's outrageous.  
12 They're putting people on the stand who have sworn  
13 under affidavits that they're telling the truth  
14 about something that they know isn't true. They're  
15 putting them on the stand and asking you all to  
16 believe them.

17 None of the prison guards or state police  
18 officers or federal agents testified that they had  
19 any evidence independent of the cooperators that  
20 Carlos was involved in the murder. And you heard  
21 from Bobby Delgado. It's funny they try to impeach  
22 him, because he's actually not in custody; living on  
23 his own, doing well, living in Espanola, and he's  
24 been sober for six years. And he takes a lot of  
25 medication for the PTSD as a result of his time

1 spent in solitary confinement. I guess that makes  
2 him a bad person?

3 He didn't get a plea agreement. He didn't  
4 get a letter of immunity. He didn't get paid. He  
5 didn't get special benefits. He came up here and  
6 told you what happened of his own free will; right?  
7 As a guy living on the outside. "Look, I was in  
8 that pod. I was friends with Carlos. We hung out.  
9 I didn't see anybody outside Lupe's door or looking  
10 at paperwork or passing it under the door, and after  
11 the murder, everyone was surprised, me included."

12 Yeah, they're not going to include him in  
13 SNM business if he's not an SNM member. But he's  
14 not an idiot. You think if all the pod, all these  
15 guys, were talking about paperwork and passing this  
16 under the door and concocting this big scheme, that  
17 people weren't going to know what was up? He's the  
18 only witness in the yellow pod to come and testify  
19 without being threatened by the federal government  
20 for a RICO investigation.

21 I don't think we're ever going to know how  
22 the story of the paperwork originated or why it  
23 originated or how it originated. But if you don't  
24 know what the truth is and you don't know what  
25 happened, that's what reasonable doubt means; right?

1 And what did Agent Acee say? People take credit for  
2 things they don't do. Taking credit for things that  
3 you don't do is a way to make you look good because  
4 you didn't do the things that you were supposed to  
5 do.

6 Having an informant, one of those guys,  
7 say something is not evidence. Who brought Mario  
8 Rodriguez into the gang? Billy Cordova. Mario ran  
9 the blue pod. Mario wanted to increase his status.  
10 Mario wanted to increase his position. And when he  
11 sat down with those informants, what did he tell  
12 them? You have a choice. It's simple. Be a  
13 witness or be a defendant. And he states that he  
14 never threatened them with the death penalty.

15 Witness after witness denied that happened, but when  
16 we played the phone calls, they're telling their  
17 family they were threatened with the death penalty.

18 And the Government's explanation for that  
19 is, "Oh, well, they just lied to their family to  
20 explain why they were cooperating."

21 Ladies and gentlemen, let's just buy that  
22 argument for a minute. Let's just say that that's  
23 what they were doing. Do you think if those guys  
24 lie to their families, they're going to tell the  
25 truth to you? That's incredible. That's

1     incredible.

2                     And what else did they do by making that  
3     statement? They've called their own witnesses  
4     liars. They didn't tell you the truth about that.  
5     That was a lie. How do you know what to believe?  
6     They can't even defend their own witnesses' ability  
7     to tell the truth.

8                     I just want you all to remember when you  
9     go back there that it's sort of ironic, because  
10    Mario and Billy and Lupe and a whole lot of them are  
11    nasty guys. I get that. You get that. And it's  
12    easy to go back there and say, "Well, Carlos knew  
13    what he signed up for. They were all in the same  
14    gang"; right?

15                    But that's not how this works. You can't  
16    convict somebody on the theory of guilt by  
17    association. That's not what your job is. And you  
18    promised us you weren't going to do that. And if  
19    you all don't have a reasonable doubt about what  
20    happened in this case and about what the truth is,  
21    then I don't know what reasonable doubt is,  
22    honestly. And at the end of the day, I want you all  
23    to go back there and write "not guilty" for  
24    conspiracy to murder and the murder of Javier  
25    Molina. Thank you.

1 THE COURT: Thank you, Ms. Bhalla.

2 I want to see counsel up here at the  
3 bench.

4 (The following proceedings were held at  
5 the bench.)

6 MS. BHALLA: I kept it under 45 minutes.

7 THE COURT: Do you just want to get after  
8 it?

9 MS. JACKS: I actually don't. I don't. I  
10 know it's 4:30. If I have a choice, I'd like to do  
11 it tomorrow morning. It's been a long day for the  
12 jury.

13 THE COURT: Well, I think an hour is a  
14 little long to just send them out. What's the  
15 Government's thoughts?

16 MS. ARMIJO: We prefer that we keep going.

17 MS. JACKS: If that's the case, then I ask  
18 we go through the Government's rebuttal argument.

19 MS. BHALLA: I thought about that earlier.

20 THE COURT: I've got make a call here.  
21 Let's do the closing.

22 MS. JACKS: Your Honor, can I have 10  
23 minutes? Because I need to get my PowerPoint  
24 together.

25 THE COURT: All right. Do 10 minutes.

1 (The following proceedings were held in  
2 open court.)

3 THE COURT: All right. We're going to try  
4 to have about a 10-minute break. So if everybody  
5 will just keep this break a little short.

6 Again, until the trial is completed,  
7 you're not to discuss this case with anyone, whether  
8 it's members of your family, people involved in the  
9 trial, or anyone else. And that includes your  
10 fellow jurors.

11 If anyone approaches you and tries to  
12 discuss the trial with you, please let me know about  
13 it immediately.

14 Also, you must not read or listen to any  
15 news reports of the trial. Again, don't get on the  
16 internet and do any research for purposes of this  
17 case.

18 And finally, remember that you must not  
19 talk about anything with any person who is involved  
20 in the trial, even if it doesn't have anything to do  
21 with the trial. If you need to speak with me,  
22 simply give a note to one of the court security  
23 officers or Ms. Standridge.

24 I'll probably repeat these one more time  
25 and some tomorrow, but do keep them in mind if we



1 don't.

2 All right. We'll be in recess about 10  
3 minutes. All rise.

4 (The jury left the courtroom.)

5 THE COURT: All right. We'll be in recess  
6 for about 10 minutes.

7 (The Court stood in recess.)

8 (The jury entered the courtroom.)

9 THE COURT: All right. Everyone be  
10 seated.

11 All right, Ms. Jacks. Do you have closing  
12 argument on behalf of Mr. Sanchez?

13 MS. JACKS: I do. Thank you.

14 Good afternoon, ladies and gentlemen. I  
15 have the pleasure of being the last defense lawyer  
16 to argue, and I guess what I want to say is, I'm  
17 going to do my best not to repeat and rehash  
18 arguments that have already been made, but I  
19 appreciate your attention.

20 I'm just going to start -- I just want to  
21 start with sort of some general comments. And  
22 unfortunately, I do have a PowerPoint, and I'm going  
23 to start with that.

24 So I think I told you at the beginning of  
25 this case that what a trial is supposed to be is a

1 search for the truth. And unfortunately, that's not  
2 always the easiest thing, but you do have three  
3 things to help you. One is the evidence in the  
4 case. And maybe that's less helpful in this case  
5 than in some other cases, but the bottom line is:  
6 You have that.

7 And you have the judge's instructions on  
8 the law. And the final thing you have, you walked  
9 in here with, and you're going to take with you when  
10 you go home, and that's your common sense.

11 And if you use those three things -- the  
12 evidence, the instructions, and your common sense --  
13 you will be able to reach a verdict in this case as  
14 to Mr. Sanchez, and verdicts that reflect truth and  
15 that reflect justice.

16 I want to -- I guess I just want to sort  
17 of start off and talk about what this case isn't.  
18 Because Mr. Sanchez is not on trial for being in  
19 state prison. He's not on trial for being a member  
20 or associate or a suspect of being in the SNM. And  
21 he's not on trial for the 2005 assault that you  
22 heard about on that guy named Rhino and that you've  
23 seen some documents that reference that.

24 He's on trial for two things, and he's on  
25 trial for two offenses, two offenses that are

1 alleged as being federal crimes, violent crimes in  
2 furtherance of racketeering. And those two offenses  
3 are the conspiracy to murder Javier Molina and the  
4 murder of Javier Molina. And it's only those  
5 charges.

6 And so what you're being asked to decide  
7 is whether the Government has proven the truth of  
8 those allegations against Mr. Sanchez beyond a  
9 reasonable doubt. And the judge read you this  
10 instruction. This is jury instruction number 3, and  
11 I just highlighted some language here defining what  
12 reasonable doubt is. And what the instruction says  
13 is that "Proof beyond a reasonable doubt is proof  
14 that leaves you firmly convinced of a defendant's  
15 guilt."

16 And the instruction goes on to try to  
17 define what a reasonable doubt is, so you know if  
18 you have one. And what the instruction said is: "A  
19 reasonable doubt is based on reason and common  
20 sense."

21 In other words, you don't have to think,  
22 oh, maybe Martians landed and murdered Javier  
23 Molina. That's an imaginary doubt. But a doubt  
24 based on reason and common sense is a reasonable  
25 doubt. It's not that mysterious. And what the

1 instruction goes on to tell you is, it may arise  
2 from your consideration of the evidence, but you can  
3 also have a reasonable doubt based on the lack of  
4 evidence. If something happened or something  
5 doesn't exist that should exist if the charges are  
6 true, and it doesn't exist, that could be a  
7 reasonable doubt as well. So instruction number 3  
8 talks to you about what a reasonable doubt is.

9 Now, this is my interpretation of  
10 reasonable doubt. And essentially, a reasonable  
11 doubt is a reason to doubt. It's not speculation.  
12 It's something that you can point to, something that  
13 you can discuss, and something that you could say,  
14 you know, that causes me to question the truth about  
15 what has been said here in court about what the  
16 Government is claiming happened.

17 And it's the highest standard. Proof  
18 beyond a reasonable doubt is the highest standard in  
19 the law. When two parties in a car accident -- when  
20 two parties are fighting over who was at fault,  
21 they're fighting over money, the standard of proof  
22 in that case is a propensity of the evidence. Who  
23 just slightly tips the scale in their direction.  
24 Proof beyond a reasonable doubt is higher than that.  
25 When the State is considering whether to remove a

1 child from a home, the standard of proof or the  
2 burden of proof in that sort of situation is clear  
3 and convincing evidence. And proof beyond a  
4 reasonable doubt is higher than that.

5 When someone's liberty is at stake, the  
6 law requires that before any verdict of guilty can  
7 be returned, the Government has to meet the standard  
8 of proof beyond a reasonable doubt. And unless they  
9 do and until they do, Mr. Sanchez is entitled to a  
10 verdict of not guilty.

11 I guess some of us -- I'm sort of -- well,  
12 I was a math major, and I'm always looking for some  
13 sort of scientific, firm answer. And so what I just  
14 want to say here is: There isn't a scale. There is  
15 not a scientific way to measure whether the  
16 Government has reached their burden of proof and  
17 proven the case beyond a reasonable doubt. And  
18 there is also no scientific or mathematical way to  
19 measure whether a reasonable doubt exists. Those  
20 concepts are words. And justice is given by the  
21 meaning and the conviction with which you respect  
22 and honor those words.

23 And I guess if you want to go back there  
24 and say who really cares, Daniel Sanchez is in  
25 prison, he must have done something bad, I don't

1 really care, I'm tired, I want to go home, let's  
2 just convict him and get out of here. If that's  
3 what you want to do, nobody's going to stop you.  
4 But you're going to set the standard of what justice  
5 is supposed to be or is going to be in our society,  
6 and you, the jury, is going to determine whether  
7 we're going to follow the law in our society.

8 And when I was putting together my  
9 remarks, I was reminded by this quote from Martin  
10 Luther King, and this is from a letter that he wrote  
11 while he was incarcerated in the Birmingham jail.  
12 And what Martin Luther King said is, "Injustice  
13 anywhere is a threat to justice everywhere."

14 And I just ask you -- because it's not  
15 always an easy job and I have the highest hopes that  
16 you -- I mean, you've demonstrated that you're  
17 conscientious and careful and attentive. And I  
18 think that if you apply the burden of proof and  
19 apply the law in a manner that it's intended to be  
20 applied, you'll be able to reach verdicts that  
21 reflect truth and justice.

22 I just want to say that Daniel Sanchez  
23 isn't rich, not famous, not powerful or  
24 well-connected. But proof beyond a reasonable doubt  
25 as to the allegations against Mr. Sanchez here in

1 this courtroom is the same standard as would be  
2 applied against anybody. Anybody. The most famous,  
3 well-connected, popular, powerful person and Mr.  
4 Sanchez have the right to have the same standard of  
5 justice.

6 And if you look, if you've seen the statue  
7 of justice -- I pulled an image off the internet  
8 here -- she's wearing a blindfold. And she's  
9 wearing a blindfold because justice doesn't depend  
10 on who is sitting over there in the defendant's  
11 chair. It doesn't depend on whether they're rich or  
12 powerful or popular or whether you can empathize  
13 with them or whether you like them. Justice is  
14 supposed to be blind.

15 Now, I want to start by taking a look at  
16 the evidence that the Government contends is proof  
17 beyond a reasonable doubt. And there is no question  
18 in this case that on March 7, 2014, Javier Molina  
19 was murdered. And we've heard from these  
20 witnesses -- and I'm going to go through these  
21 pictures pretty quickly, because I think it was  
22 covered by other lawyers.

23 Timothy Martinez, Government's witness  
24 Timothy Martinez, held Mr. Molina down and tried to  
25 incapacitate him so he could be stabbed.

1 Jerry Armenta stabbed him, was one of the  
2 stabbers.

3 Jerry Montoya, one of the second -- the  
4 second stabber.

5 And Mario Rodriguez, the one who set it up  
6 and says he made the weapons.

7 Their crimes -- this is a photograph from  
8 blue pod. Their crimes are on video. And this is  
9 just a photograph showing you the cameras on blue  
10 pod that captured their illegal conduct on March 7,  
11 2014.

12 Now, I told you -- I used this slide in my  
13 opening, and I told you that the Government was  
14 going to call witnesses, witnesses that lacked a  
15 moral compass or whose moral compass was broken.  
16 And I think during the six weeks of this trial,  
17 you've seen the kind of moral compass that these  
18 witnesses have come in here with.

19 You've also seen that they've had  
20 opportunities -- Ms. Bhalla referred to this. But  
21 they've had numerous opportunities, both before this  
22 case was charged and then after this case was  
23 charged, and actually it appears, based on the  
24 evidence, during this trial to get together and talk  
25 about what it is that they need to say to make their



1 stories straight. And probably -- this is an  
2 exhibit that Mr. Castellano talked about. This is  
3 Exhibit 756. And this is the letter that Jerry  
4 Armenta wrote to Jerry Montoya's lawyer. And we  
5 went through this in excruciating detail. But if  
6 you recall, almost every sentence in this letter is  
7 a lie, and it's a lie to try to affect the outcome  
8 of the state prosecution. And Jerry Armenta even  
9 acknowledged that he wrote this, at the bottom of  
10 the letter, about swearing to its truth, to try to  
11 make it seem like it's not a lie.

12           This is pretty serious, I would say, and  
13 persuasive evidence of the mental workings of these  
14 individuals and what they do and the length to which  
15 they'll go to try to get out of facing the  
16 consequences of their own criminal behavior. And  
17 it's rare to have such compelling evidence. I mean,  
18 how often do you have a witness write a letter  
19 that's a complete lie about a crime, and then  
20 testify and have to go through it and admit it?

21           757 is another letter, and I think this  
22 gives you a little more insight into how some of the  
23 these witnesses -- the gears are shifting or how  
24 they're working in their mind. Because this is a  
25 letter that Jerry Armenta wrote to Jerry Montoya

1 after he decided to become a witness. And I think  
2 this was becoming a witness in the state case in  
3 exchange for a sentence that he believed was going  
4 to be 18 months for the murder of Javier Molina.

5 And what he's communicating and what he  
6 acknowledged in his testimony is that this letter is  
7 trying to communicate some facts about what he told  
8 the state prosecutors about the murder and get that  
9 information to Jerry Montoya so that he can get on  
10 the same page and use those same facts.

11 And the reason -- I mean, it's subtle, but  
12 it's also very crafty. And you have to ask  
13 yourself: If people are writing things like this  
14 and thinking like this, can you trust their  
15 testimony in this trial?

16 The other sort of, I think, interesting  
17 thing about this letter is, if you recall during the  
18 course of this case, it was Mario Rodriguez that  
19 testified, I think, that when he handed Jerry  
20 Montoya this shank, the shank that he says he  
21 provided for the Molina homicide, that Montoya sort  
22 of backed up and held his hands up. Funny that  
23 that's right here in this letter that Jerry Armenta  
24 wrote, back when the state case was proceeding. And  
25 you know that Mario Rodriguez had this letter,

1 because as we've established, it's contained on the  
2 tablets in the discovery for these cases.

3           These witnesses were facing the criminal  
4 responsibility for the Molina homicide when the  
5 federal government got involved. And what you've  
6 heard is, the federal government has threatened  
7 these witnesses with possibly -- I mean, there are  
8 some of these witnesses have testified or told their  
9 family members they were being threatened with the  
10 federal death penalty. The Federal Government has  
11 promised these witnesses basically escape from the  
12 full consequences of their own actions, money, food  
13 and special treatment, special privileges. At least  
14 one got access to a cellphone while in custody, and  
15 Mr. Duran was promised and got a job as a paid  
16 government operative in connection with his  
17 agreement to become a government witness in this  
18 case.

19           I think you heard there was another  
20 Government witness that wanted to have this and was  
21 hopeful that maybe he could get employed as an  
22 undercover federal agent after his testimony here on  
23 behalf of the Government. Duran got assistance with  
24 housing. Other witnesses have been promised that.  
25 I think they were also promised jobs, cars,

1 relocation.

2 And the FBI -- while these witnesses were  
3 acting as Government witnesses, the FBI kind of took  
4 the position that if I don't see it, I don't hear  
5 it, I don't say anything, this misconduct that  
6 they've engaged in didn't happen. And yet we know  
7 from the evidence presented in this case that every  
8 time these witnesses were given an extra privilege  
9 or an extra benefit or the opportunity to do  
10 something to benefit themselves, they did it.

11 This is Mr. Armenta on November 5, 2016,  
12 in the visiting room after he was given contact  
13 visits with his girlfriend.

14 This is November 27, 2016. This is, I  
15 think, Billy Cordova. You guys will have the videos  
16 in the back. But I'm just pointing out, there is no  
17 question that these people continued, as other  
18 attorneys have said, continued their self-serving  
19 and manipulative ways even as they were serving  
20 their roles as government witnesses in this case.

21 You heard that several of these guys  
22 busted into their tablets, got internet access,  
23 surfed the internet, obtained pornography, and did  
24 whatever they could, took advantage of whatever they  
25 could.

1           This is a statement from Mr. Cordova, and  
2     you've heard similar type of statements from other  
3     Government witnesses during the course of this  
4     trial. "I seen a weakness in the system and I  
5     exploited it. That's all it was."

6           These are the people, the individuals,  
7     that the Government is presenting to you as proving  
8     the truth of the charges against Daniel Sanchez  
9     beyond a reasonable doubt. And I just want to ask  
10    you this question. How do you feel about that? How  
11    do you feel about being asked to take the word of  
12    these people and use it as proof beyond a reasonable  
13    doubt against Daniel Sanchez? How many of you would  
14    give these guys five bucks and ask them to return it  
15    the next day and actually believe you'd get the  
16    money back? I mean, are these the kind of  
17    individuals that are worthy of trust beyond a  
18    reasonable doubt? Think about the evidence that's  
19    been presented during the course of this trial. Are  
20    these people, these Government witnesses, people who  
21    outright just lie, have taken an oath to tell the  
22    truth, sat on the witness stand, and just lied?  
23    Have you seen that during this trial?

24           Are these individuals who at least at  
25    times refuse, just absolutely refuse, to provide a

1 straight answer to the question that they're being  
2 asked? Have you seen that?

3 Are these people who have told you that  
4 they can see things, they've seen things that you  
5 know didn't happen? Are these people who talked  
6 about conversations that they've claimed to have had  
7 with others that you know, based on the evidence  
8 that's been presented at this trial, couldn't  
9 happen?

10 And are these people people who have had  
11 access to the discovery, to each other, and who  
12 had -- well, who have had not only the opportunity  
13 to manufacture testimony, but who have actually  
14 manufactured testimony?

15 I think Ms. Duncan talked to you a little  
16 bit about this instruction, jury instruction 12.  
17 But it's important because what the Court tells  
18 you -- essentially accomplice and informant  
19 witnesses aren't like every other witness. I mean,  
20 if you're going to come into court and testify about  
21 something that you saw -- say it was a robbery with  
22 a getaway car -- you're going to come in and try to  
23 be as accurate as possible and give your description  
24 and answer the questions.

25 Accomplices and informants are people that

1 want something, people that want something from the  
2 Government, people that expect to get something for  
3 what comes out of their mouths on that witness  
4 stand. And what the Court has instructed you is  
5 that their testimony should be received with  
6 caution. A big flashing yellow light should be over  
7 their head while they're sitting up there on the  
8 witness stand so you know, whoa, what I may be about  
9 to hear is likely -- well, I should question. I  
10 should proceed with caution.

11 And the instruction also tells you it  
12 should be considered with great care. People that  
13 are testifying in exchange for getting out of their  
14 own criminal liability are untrustworthy.

15 And let's just talk about the things that  
16 you've heard. Because every time -- Mr. Castellano  
17 this morning was talking about the things these  
18 witnesses said about Daniel Sanchez. And I would  
19 venture to say that 95 percent of the things these  
20 witnesses say about Mr. Sanchez are things they  
21 claim Mr. Sanchez said. "Oh, he told me this. Oh,  
22 he told me that."

23 I mean, first of all, who here has not --  
24 let me just go back for a second. Claiming somebody  
25 told you something is the easiest thing in the world

1 to make up, and it's the most frustrating and  
2 hardest thing to disprove. And who here has not had  
3 the experience of somebody saying, "Well, you told  
4 me blah, blah, blah," and it's just not true, and  
5 it's completely frustrating. I mean, it is -- you  
6 just get sort of, you know, frustrated in trying  
7 to -- "Well, I didn't say that. That's not what I  
8 said. What I actually said was something else."

9 But bottom line is, these accomplices and  
10 informants know this, and they also know that what  
11 the Government is interested in is: "Tell me. Tell  
12 us. What did Daniel Sanchez say about the  
13 paperwork? What did Daniel Sanchez say about Javier  
14 Molina?"

15 They're asked these questions. And I  
16 think you heard that through the testimony of Agent  
17 Acee. He had a list of 213 questions, and quite a  
18 few of them were asking very specific questions  
19 trying to elicit some sort of evidence about what  
20 Mr. Sanchez said.

21 So I'm just going to say a couple of  
22 things about that. Number 1 is: People fight about  
23 what was said or what was meant all the time. And  
24 there is a reason we have Ms. Bean sitting right  
25 over there -- I see her nodding her head -- as a



1 court reporter. Because even in court, when people  
2 at least most of the time, you would hope, are  
3 trying to say things accurately and remember things  
4 accurately, there's constant fights over what was  
5 said. But what the Government's case essentially is  
6 against Mr. Sanchez is claims about what he  
7 supposedly said to these accomplices and informants.

8 And just to sort of finish up with this  
9 thought, I guess when you're considering that  
10 evidence, I think you have to ask yourself: Am I  
11 firmly convinced that Mr. Sanchez actually said  
12 that, or do I have questions about what the witness  
13 has testified to based on reason and based on common  
14 sense?

15 And then there's this little thing called  
16 corroboration. With respect for the Government's  
17 case against Mr. Sanchez, you've got untrustworthy,  
18 proven lying witnesses that have been offered by the  
19 Government as proof beyond a reasonable doubt. And  
20 I would submit to you that before you can decide  
21 whether you can believe some of these people, you  
22 ought to take a look for corroboration. I mean, if  
23 people say things happen, this is a crime that  
24 occurred in prison. Prison is a rigid, documented,  
25 and surveilled environment. So why not look for

1 some corroboration to see what the witnesses have  
2 told you is true?

3 And I guess I have a comment, a few  
4 comments, about our efforts to corroborate or to  
5 show the lack of corroboration of these accomplice  
6 informants that have been served up by the federal  
7 government.

8 How has the Government responded to our  
9 attempts to search for corroboration of these  
10 witnesses? Has the Government tried to prevent you  
11 from actually seeing or hearing about evidence that  
12 should naturally corroborate its witnesses if they  
13 were actually telling the truth? Has that happened  
14 during the course of this trial? Has the Government  
15 tried to offer excuses when the corroboration is  
16 lacking?

17 When the Government witnesses -- I mean,  
18 there have been clear instances where they sit up  
19 there and just lie. What's the Government done to  
20 correct that? Anything? Or do they just roll with  
21 it because it fits in their theory of the case?

22 And has the Government concealed evidence  
23 that's relevant to your judging the credibility of  
24 its witnesses? I mean, think about the testimony  
25 last Friday. Has the Government concealed evidence

1 that Mr. Sanchez is not guilty of the crimes  
2 charged? And what I'm talking about here is what  
3 came out last Friday, that four pages of notes that  
4 FBI Agent Sainato took. Essentially he was typing  
5 away as the Government prosecutors were interviewing  
6 Mr. Urquizo just prior to trial. And the Government  
7 withheld those four pages of notes for Mr. Sanchez  
8 until last Wednesday night.

9 And do you remember what they said? Do  
10 you remember what Mr. Urquizo told the Government  
11 during that pretrial interview? I think it was on  
12 January 24, 2018. This was Agent Sainato's  
13 testimony. And I'm asking questions about Mr.  
14 Urquizo's pretrial interview. And this is along the  
15 topic about Mr. Urquizo saying that after the Molina  
16 homicide, he was talking with other people in the  
17 SNM, other Government witnesses, about killing Mr.  
18 Sanchez. And he was talking about killing Mr.  
19 Sanchez for two reasons. "Did he tell you that one  
20 of the reasons they wanted to kill Daniel Sanchez  
21 was because he did not participate in the Molina  
22 homicide?"

23 "Let me check my notes." And Agent  
24 Sainato checks his notes. "Thank you. Yes, ma'am.  
25 That's accurate."

1           So a witness, a government witness, tells  
2   an FBI agent during a pretrial interview that  
3   occurred in January of 2018 that they wanted to kill  
4   Daniel Sanchez because he did not participate in the  
5   Molina homicide. Did this information show up in  
6   the official report of the interview? What's the  
7   evidence about that? And why did the Government sit  
8   on this until last Wednesday night, by my count, 22  
9   days after Mr. Urquizo was done testifying?

10           I have another question. Does it? Does  
11   that strike you as fair?

12           Let's talk about this paperwork. I mean  
13   we're going into detail about this, and I apologize,  
14   but this paperwork thing is something that deserves  
15   some careful attention because it's the whole reason  
16   the Molina murder supposedly happened, and you've  
17   got to ask yourself: Was there paperwork? No  
18   paperwork has been presented in this trial, but was  
19   there paperwork?

20           I just have a few questions about the  
21   paperwork. What was it? Was it a police report?  
22   Was it a court document? Was it some typed-up  
23   report of interview? What was it? How big was it?  
24   How many pages was it? What colors were on it?  
25   What did it look like? I mean, if you got some

1 paperwork and you saw it and you read it, are these  
2 difficult questions to answer? I mean, this is not  
3 rocket science, these questions. If you actually  
4 saw it and read it and looked at it, you'd know what  
5 the answers are.

6 And then there's the real, you know,  
7 \$64,000 question. What did it say? There are  
8 multiple stories about this paperwork. And each  
9 individual that testified about it, it's not like  
10 they had a short time to look at it. Most of them  
11 had it for days, weeks, if they had it. I mean,  
12 most of them have claimed to have had it for days or  
13 weeks. And it's paperwork that they're supposedly  
14 going to use to kill somebody. Don't you think  
15 they'd read it, look at it, remember it, what was  
16 significant about it?

17 And what sort of answers did they - I  
18 mean, their answers were consistently inconsistent  
19 except for one thing, one thing. And I pulled the  
20 testimony. But on February 5 of 2018, David Calbert  
21 told you that the paperwork was about a  
22 purse-snatching, and he called it a strong-arm  
23 robbery. And this was supposedly the crime that  
24 Javier Molina committed where he then provided  
25 information to law enforcement that was going to

1 require that he be killed. So Calbert tells you  
2 it's a purse-snatching and he will call it a  
3 strong-arm robbery.

4 On the same day, I guess he passed Lupe  
5 Urquizo in the lockup downstairs. Lupe Urquizo  
6 tells you it's a purse-snatching. And a few days  
7 later, Mario Rodriguez is asked about the paperwork  
8 and what sort of crime was it, and Mario Rodriguez  
9 says, "It wasn't him that did the purse-snatching.  
10 It was some other guy," but that it dealt with a  
11 purse-snatching.

12 And let's think back -- let's think back a  
13 week or so, when Agent Acee was on the stand as the  
14 Government's last witness. He was asked, I think,  
15 these questions by Mr. Castellano about what was the  
16 crime in July of 2009 that Mr. Molina was  
17 investigated for that generated this paperwork. And  
18 Agent Acee testified, "It was what I would describe  
19 as a strong-arm robbery."

20 And I asked him some questions about that  
21 last Friday. I asked him a little bit more about  
22 what he meant by a strong-arm robbery. And he told  
23 you, "I heard him describe it as a robbery or a  
24 purse-snatching."

25 I said, "Can you tell us, in your mind

1 anyway, what is a strong-arm robbery?"

2 "It's the taking of property" -- this is  
3 Agent Acee. "It's the taking of property from a  
4 person by force or fear. I use the term strong-arm  
5 from my law enforcement understanding that it was  
6 without a weapon, so just through intimidation or  
7 physical force."

8 So we have Calbert, Urquizo, and Rodriguez  
9 all saying it's a purse-snatching. Calbert uses the  
10 term strong-arm robbery. We have Agent Acee telling  
11 that you it's a purse-snatching and a strong-arm  
12 robbery. Is that true? Here's the Grand Jury  
13 indictment. This is Exhibit FZ. You'll have this  
14 in the jury room to look at. And this is from July  
15 2009, the date that Agent Acee was asked about  
16 regarding the crime that Molina supposedly took.  
17 It's an armed robbery with a firearm.

18 And if you look at what the Grand Jury  
19 alleged was stolen, it was a deposit bag, a  
20 cellphone, and U.S. currency. So I have a couple of  
21 questions about that. First of all, why did Agent  
22 Acee testify it was a strong-arm robbery and a  
23 purse-snatching when it wasn't? Did he do that to  
24 try to provide some sort of corroboration for the  
25 Government's witnesses, thinking he wouldn't get

1 caught? Or did he never check it out? Did he just  
2 assume, because they said that, that was true? I  
3 mean, is either answer a good one?

4 And I realize -- I guess I realize one  
5 other thing I want to sort of talk to you about with  
6 respect to this paperwork. Remember when I was  
7 asking Mario Rodriguez about the paperwork, and  
8 Mario Rodriguez -- you could see his mind kind of  
9 working on the stand. He said, "Wait. Nobody has  
10 ever asked me these questions before about what it  
11 looked like, what it was, how many pages it was,  
12 what it says."

13 Why not? I mean, the FBI is investigating  
14 a federal offense, a federal offense that supposedly  
15 was committed because of this paperwork. Its  
16 witnesses are claiming that the paperwork involved a  
17 purse-snatching or a strong-arm robbery. Why  
18 wouldn't you check it out?

19 I mean, again, like I said, it's not  
20 rocket science. Come on. If you were investigating  
21 this and you had a witness that you knew was a  
22 prison inmate, a gang member, had a history of lying  
23 and colluding with others to lie, wouldn't you  
24 think, wow, maybe I should see if what he's telling  
25 me is the truth. Here's a simple thing to



1 corroborate. He's saying the Molina paperwork  
2 showed it was a purse-snatching and no weapon was  
3 used. Trot over to the police station, the  
4 courthouse, get the documents, let's see if that's  
5 true.

6 And I guess I would ask you to ask  
7 yourself: Why didn't the Government check it out?  
8 Why didn't the Government ask the witnesses the  
9 details about what this paperwork allegedly was?  
10 And is the federal government just happy to accept  
11 what its witnesses say as long as it fits in with  
12 what they want to prove or what their theory of the  
13 case is? And does the fact that the Government --  
14 the three Government witnesses make the same mistake  
15 about the paperwork -- what does that tell you? I  
16 mean, if they were just guessing randomly, if they'd  
17 never seen the paperwork and just guessing randomly,  
18 you'd sort of expect their answers to be different,  
19 like everything else about the paperwork. But on  
20 this topic, boom, everybody is in order. Strong-arm  
21 robbery, purse-snatching. Why is that?

22 Let's move on. That was just about: What  
23 was this paperwork that people are making claims  
24 about? Let's move on to the next claim about the  
25 paperwork, which is from David Calbert. And David

1 Calbert is the guy that claims that he was in the  
2 rec cage and this guy Joe Martinez, Cheech, came by  
3 with some paperwork rolled up like a straw and  
4 passed it to him through the mesh or the cage. And  
5 he claimed that this happened -- he was questioned  
6 about it by Ms. Duncan, he was questioned about it  
7 by me. He claimed this happened at PNM North and he  
8 said he was living in housing unit 1-B. And we --  
9 he was asked -- he said it was -- I think his answer  
10 was three, four, or five months before he was  
11 transferred to PNM South. And he said he knew at  
12 the time that he got the paperwork, the time he  
13 claimed to have gotten paperwork, he was going to be  
14 going back to PNM South; that he knew that he was  
15 going to be transferred soon. And what he testified  
16 about is he was asked to look at the housing records  
17 and see if he could answer the question about when  
18 he was there. When was he in unit 1-B at PNM North,  
19 and what was time period that this paperwork  
20 transfer allegedly occurred?

21 And he agreed that he was in unit 1-B from  
22 May 2, 2013, to February 13 of 2014. And then on  
23 February 13 of 2014 was the day he was actually  
24 transferred to PNM South facility. And he was  
25 asked, "Is that the time period that you're saying

1 that Cheech, Joe Martinez, passed this paperwork to  
2 you that was rolled up like a straw?"

3 And his answer, right here, line 12, "I'd  
4 say within that time." That's his testimony.

5 And lo and behold, what do you know? This  
6 came out with Nancy Stemo and then the Government  
7 has been jumping around ever since trying to fix it.  
8 But what came out with Agent Stemo was that Joe  
9 Patrick Martinez, Cheech, wasn't in state prison  
10 during the time that David Calbert claims he handed  
11 him this paperwork rolled up like a straw. Turns  
12 out Cheech got out of New Mexico State Prison,  
13 according to these housing records, on April 11,  
14 2013, and he went back, but he didn't go back until  
15 February 10th of 2016.

16 So how can someone that's not even in  
17 prison be escorted to the prison rec yard and hand  
18 David Calbert paperwork rolled up like a straw? I  
19 mean, the Government can now come up with other  
20 excuses or other explanations or arguments, but  
21 David Calbert sat on this stand and testified and  
22 answered questions and he told you when he claimed  
23 that transfer was. And it's not corroborated by the  
24 records from prison. It's in fact impossible.

25 So let's go to the next story about the

1 paperwork that you heard from the Government's  
2 witnesses. Remember the next story? What did  
3 Calbert claim that he did with this paperwork? He  
4 says he gave it to Lupe Urquizo. Then Lupe Urquizo  
5 was transferred from PNM South down to Southern New  
6 Mexico Correctional Facility. So, well, I mean, you  
7 heard the testimony. We went and interviewed Mr.  
8 Urquizo, and Mr. Urquizo said, "That didn't happen.  
9 And why don't you look for the property records and  
10 the transport records, and it will corroborate me.  
11 It will show you that I'm telling you the truth.  
12 Didn't happen."

13               So we get them. This is Defendant's  
14 Exhibit U2. This is Lupe Urquizo's property  
15 inventory list from March 6 of 2014 and it's from  
16 the Penitentiary of New Mexico. And this is the  
17 property inventory that was taken prior to Urquizo  
18 being transferred to Southern New Mexico  
19 Correctional Facility. You've heard way too much  
20 about these property inventory things. I'm sure you  
21 remember those days. But the bottom line is: This  
22 is a document the Government fought hard not to have  
23 admitted as evidence in this trial.

24               And if you look at it, there is a  
25 section -- well, you can look and see, and you'll

1 have this in the jury room, this is a list of what  
2 was supposedly transported with Mr. Urquizo in that  
3 trailer. And there is absolutely nothing on here  
4 about legal paperwork or legal letters.

5 Now, the Government wants to offer an  
6 explanation. Because this doesn't corroborate their  
7 witness, they want to offer a different explanation  
8 and say, "Well, you know, the correctional officer  
9 didn't follow the rules, he didn't prepare the right  
10 inventory, he left the things off the paperwork."

11 I mean, that's an argument. That's an  
12 argument. And I guess I wanted to talk to you a  
13 second about circumstantial evidence. Because the  
14 Court instructed you about circumstantial evidence,  
15 and what circumstantial evidence is is evidence  
16 that, in order to understand it or in order to make  
17 it relevant to your determination, it requires an  
18 inference. So this is an example of circumstantial  
19 evidence. This is circumstantial evidence of what  
20 Mr. Urquizo took with him to Southern New Mexico  
21 Correctional Facility, and I'm offering it to show  
22 you that Urquizo didn't have legal paperwork on him.

23 The Government wants to argue that, well,  
24 maybe the correction officer didn't fill it out, or  
25 maybe the correctional officer didn't fill it out at

1 all.

2 If you think the Government's explanation  
3 is reasonable, I think you'd also have to concede  
4 that mine is reasonable, as well. And when you have  
5 two reasonable explanations of circumstantial  
6 evidence, you don't just get to pick which one you  
7 accept. If there is a reasonable explanation that  
8 supports Mr. Sanchez being not guilty of the crimes  
9 charged, then what is that? That's a reasonable  
10 doubt.

11 So don't let the Government fool you with  
12 its alternate explanations. If you think that this  
13 is a property inventory or if you think a reasonable  
14 interpretation of this is a property inventory of  
15 Lupe Urquizo's property prior to his transport, this  
16 doesn't corroborate Lupe Urquizo. In fact, this  
17 shows he didn't transport legal paperwork, and that  
18 is a reason to doubt the truth of the charges.

19 The other thing I just want to point out  
20 about this paperwork and this property inventory  
21 list is: What did you hear about the purpose of the  
22 property inventory list? What is one reason that  
23 it's completed? When an inmate is transferred to a  
24 new institution, he goes in the van, and the  
25 property goes behind the van in a plastic bag. And

1 when the inmate gets to the new institution and gets  
2 his property back, if it's not listed on this form,  
3 he has no claim for the property.

4 So if something is missing and it's not on  
5 this form, tough luck. You ain't getting it back.  
6 The purpose of -- I mean, so I guess what I'm  
7 saying, is, if Mr. Urquizo had legal paperwork that  
8 he wanted, that in fact he supposedly needed when he  
9 got down to Southern New Mexico Correctional  
10 Facility, it would be listed on this form or he'd  
11 have no way to correct the error or to fight back if  
12 for some reason it was misplaced.

13 We presented some evidence about the  
14 transport. This is the van and this was offered for  
15 a few reasons, but number 1, this is just -- you see  
16 that the inmates were transported separate from  
17 their property. They don't have access to their  
18 property during the transport. It's in a separate  
19 vehicle that's towed behind the van, and that when  
20 they get to the new institution, in this case  
21 Southern New Mexico Correctional Facility, they are  
22 separated from their property and their property is  
23 returned to them after it's inventoried, a property  
24 list is completed, and then it's brought to them for  
25 them to acknowledge receipt.

1           Now I want to talk to you about the  
2 transport just briefly. And I want to talk to you  
3 about something that Mr. Castellano brought up,  
4 which is Government's Exhibit 755 and Defendants'  
5 Exhibit EY. EY is the list that I made with Mario  
6 Rodriguez going through what he's claiming, what  
7 he's testifying happened on March 6 and 7 related to  
8 the Molina homicide. And 755 is the Government's  
9 rendition of this with additions that were made by  
10 Ms. Armijo.

11           I don't care which one you use. Okay?  
12 But compare these lists to the transport records and  
13 the housing unit logs, because what we've got going  
14 on is: Mr. Rodriguez has a lot of things happening  
15 on March 6 when Lupe Urquizo is at PNM, at the  
16 Penitentiary of New Mexico, or in the van riding  
17 down to the prison.

18           According to these lists, there's a bunch  
19 of stuff that happens between noon and 4:00 p.m. on  
20 March 6, 2014. But look at these transit records.  
21 Where is Mr. Urquizo between noon and 6:15 p.m. on  
22 March 6? He's in the van driving down. And if you  
23 remember Mr. Rodriguez' testimony during the time  
24 that I was asking him questions about what happened  
25 when, he'd say things like, "Well, usually we have



1 rec about this time." Or "Usually -- the van  
2 usually takes about four hours to get down."

3 He's not testifying from memory. He's  
4 testifying from what he thinks usually happens to  
5 make his story. I mean, he gave it a shot, but the  
6 shot doesn't line up with the records.

7 So this shows the transit van arrived at  
8 Southern New Mexico at 6:15 p.m. on March 6, 2014.  
9 And you heard from the transport officer, Herman  
10 Gonzalez, who said that inmates go into sort of a  
11 holding area where they're placed in a cell or cage,  
12 then they're processed through medical. So there is  
13 some sort of delay between when they get there and  
14 when they're actually assigned the unit -- actually  
15 go to their assigned unit.

16 And the page I'm showing you right now is  
17 page 3 of Defendants' Exhibit T, but the other page  
18 you ought to look at it is page 3 of our Exhibit S2.  
19 This is the housing unit log for unit 1-A, March 6,  
20 2014. And if you look at the top entry right there,  
21 1947 hours, so that's 7:47 p.m., if my math is  
22 right. "CO Aguirre and CO Flores enter A pod to  
23 place new inmates in cells."

24 There you go. And they're done at 1958.  
25 So all the things that Mario Rodriguez told you

1 happened the afternoon of March 6, 2014, couldn't  
2 have happened, because Lupe Urquizo was not at  
3 yellow pod at Southern New Mexico Correctional  
4 Facility. He's at PNM, he's in the van, he's being  
5 processed in, and he doesn't get to yellow pod until  
6 just before 8:00 p.m.

7 I want to move forward. This is  
8 Government's Exhibit 778, and this is a property  
9 inventory list for Raynaldo Enriquez. And if you  
10 remember, Raynaldo Enriquez was another guy in that  
11 transit van, and he was another guy brought down to  
12 Southern New Mexico Correctional Facility on March 6  
13 and placed in yellow pod. And as you can see, this  
14 property inventory form -- there are a couple of  
15 interesting thing about it.

16 First of all, there is no similar form for  
17 Mr. Urquizo. You heard that from Mr. Brewster. So  
18 they couldn't locate a similar form like this for  
19 Mr. Urquizo. When you look at this form, I want to  
20 ask you, look at the entries in it and ask yourself  
21 if it looks like the correctional officer that  
22 filled it out completed it conscientiously. I mean,  
23 is there an effort to document everything that is in  
24 Mr. Enriquez' property? And look specifically at  
25 the entry under "miscellaneous items" where it says

1 "legal letters." What does the correctional officer  
2 write there? "Paperwork, legal letters."

3 But the other interesting thing about this  
4 particular form is, it's not signed by Mr. Enriquez.  
5 And what do you know about what the procedures are  
6 supposed to be for these property inventory lists?  
7 That when the inmate receives his property back, he  
8 signs the inventory to acknowledge that he got back  
9 what the inventory says. And I think you'll see on  
10 this, the correctional officer here confiscated  
11 items for Mr. Enriquez. A shaver, a do rag. I  
12 can't read the rest of it. It's too small. But  
13 you'll have this in the jury room during your  
14 deliberations.

15 So while this form is completed, it  
16 certainly doesn't evidence that Mr. Enriquez got his  
17 property back. And you remember what Mr. Urquizo  
18 told Mr. Filipiak and I back before he became a  
19 Government witness? He told us he didn't get his  
20 property back, that the Molina homicide happened  
21 before he was able to get it. And he actually said  
22 that his property was brought in and placed in the  
23 common area of yellow pod, but it wasn't returned to  
24 him before the homicide.

25 Let's take a look at the unit log for unit

1 1-A for the afternoon March 7, 2014. This is a page  
2 from Defendants' Exhibit S6. And I think it was  
3 Correctional Officer Borjas who testified about this  
4 log and completing this log. And look at the entry  
5 for 1517 hours. That's 3:17 p.m. "CO Murphy, CO  
6 Price enter A pod" -- that's yellow pod -- "for S/C  
7 security check. Leave property." It's right there  
8 in black and white. And it doesn't say, "Return  
9 property." It says, "Leave property." Just like  
10 Mr. Urquizo told Mr. Filipiak and I, it was left on  
11 the table and he could see it, but it wasn't  
12 returned to him.

13 Why is this important? Why do I care what  
14 time? Why do I care if Urquizo got his property or  
15 when he got it? Well, let's look at the list on EY  
16 or 755. Because according to Mario Rodriguez, he  
17 got the paperwork from Mr. Urquizo; his story is, he  
18 got it under the door after lunch which ends at  
19 12:00 noon. And within 15 minutes -- he claimed he  
20 read it with Mr. Sanchez, and within 15 minutes  
21 passed it back. And then at about 2:25 he says he  
22 went and took the piece that he says he got from Mr.  
23 Perez' walker and started manufacturing weapons to  
24 be used in the crime.

25 But if Mr. Urquizo didn't get his property

1 back and if it wasn't even put in the pod until 3:17  
2 p.m., how is Mario Rodriguez reading it with Mr.  
3 Sanchez? Do you want to tell me how that happens?

4 So the documents from the prison don't  
5 corroborate Mr. Urquizo in that he transported  
6 paperwork. They don't corroborate Mr. Rodriguez in  
7 terms of the conversations that he claims to have  
8 had with Mr. Urquizo. They don't corroborate when  
9 Mr. Rodriguez claims to have gotten the paperwork.  
10 And they don't corroborate the fact that Mr.  
11 Urquizo's property was even returned to him in time  
12 for the Molina homicide.

13 Let's go forward, because Mr. Rodriguez  
14 claims that in the afternoon of March 7, if you look  
15 at Exhibit EY or 755, he talks about making shanks  
16 to be used in the crime. And he tells that happened  
17 around 2:45. It says he got the shanks about 2:25  
18 or 2:30, and at about 2:45 he started making the  
19 shanks. He stayed back while people in the unit  
20 went to phone yard.

21 And I think the Government tried to have  
22 Jerry Armenta give you at least some piece of that  
23 story, trying to get Armenta to corroborate  
24 Rodriguez. But again, the truth is told by the  
25 records from the unit.

1           Let's look at -- this is the day shift.  
2   So this is March 7, starting early in the morning.  
3   And you'll see -- let's see. I think I remember  
4   what I did here. You'll see at 9:04 in the  
5   morning -- let me go back. Sorry. At 7:48 in the  
6   morning, A pod, that's yellow pod, is en route to  
7   large rec yard. And at 7:54, B pod is en route to  
8   large rec yard.

9           And then we go down to 9:09. A pod,  
10   yellow pod, returns from rec. And 9:15, B pod  
11   returns from rec. You'll have this exhibit back in  
12   the jury room. But what I'm going to tell you is:  
13   After that, there is no more rec. There is no phone  
14   yard.

15           Let's look. This is the second page of  
16   that log, Exhibit S4. This goes to 1:09 p.m. And  
17   then we switch over to the swing shift log. And  
18   this is the swing shift log. This is Defendants'  
19   S6. Read through it. Read through it back there in  
20   the jury room. But there is no phone yard. So not  
21   only is there no property list that shows paperwork;  
22   there is no showing that the property was even  
23   returned to Mr. Urquizo. There is no -- none of  
24   this fits with the story that Mario Rodriguez told  
25   you, and there is no phone yard. So there is no

1 recess where everybody leaves where Mario Rodriguez  
2 is in his cell making shanks.

3 I'm going to just go back to this, because  
4 I have one other point with respect to this. I  
5 think in his opening argument, Mr. Castellano talked  
6 about the logs, the unit logs not showing the  
7 porters, not showing when the porters were released  
8 and working in the pod. Yeah, right. They don't.  
9 Because the porters don't leave the pod. They're in  
10 the pod, cleaning the pod. They're let out of their  
11 cells, and I think we established through the  
12 correctional officers these logs don't show every  
13 time an inmate is let out of his cell. But it  
14 doesn't show the porters coming and going from the  
15 unit because what the logs do is document people  
16 coming and going from the unit. So it's not like  
17 the log was wrong or somebody wasn't doing their  
18 job.

19 This brings me -- I pulled this off the  
20 internet. Unit blue pod was a crime scene. A man  
21 was killed. And when you think about the  
22 investigation into the crime and how it was  
23 conducted, I think you have to ask yourself: Why  
24 didn't law enforcement go back after they had more  
25 information or more claimed information from people

1 that they were interviewing and get the video? I  
2 mean, the piece of video that you got -- and you'll  
3 have it back in the jury room to watch -- it's  
4 really short. I think it's about 15 minutes. And  
5 if you remember the testimony about it, it's video  
6 that was just provided to Detective Palomares that  
7 night, the night of the homicide.

8 But if you think about the testimony  
9 presented here in court, according to my notes, back  
10 on February 13 Jerry Montoya testified. And Jerry  
11 Montoya acknowledged that on March 10th of 2014 he  
12 provided some information to the STIU at Southern  
13 New Mexico Correctional Facility. And what he  
14 challenged them to do was go get the video. Go look  
15 at the video. The video, according to Mr. Edgeman,  
16 who was in charge of security at that time, could be  
17 saved for 20 to 60 days. This is March 10th. This  
18 is only a few days after the Molina homicide. And  
19 Montoya is telling law enforcement, "Hey, go get the  
20 video. And if what I'm telling you is true, the  
21 video should corroborate me." Where is it? Where  
22 is the missing video?

23 And if you think -- well, I mean, if it  
24 corroborated -- I mean, do you think he looked? If  
25 you were investigating a crime, a homicide, you're



1 in charge of the investigation and somebody tells  
2 you, "It's on video; you need to go get this," what  
3 do you do? Do you just sit there like a toad or do  
4 you go get it? And if they got it and it showed  
5 Montoya was telling the truth, don't you think they  
6 would have saved it? The fact that it's not here,  
7 if I was a juror, it ought to cause you concern, the  
8 fact that it's not here.

9 And would you accept -- I mean, if this  
10 was a crime that occurred on the street and was in  
11 an area that had surveillance either from a  
12 residential security camera or some sort of  
13 surveillance camera on the street and the police  
14 that were investigating the homicide were told  
15 things and told, "Hey, go get the video; if I'm  
16 telling the truth, it will show if I'm telling the  
17 truth," would you accept, hey, we just didn't do it?  
18 We just didn't care?

19 What did the evidence in this trial show  
20 you about Mr. Sanchez? What did the credible  
21 evidence show you about Mr. Sanchez? Well, you know  
22 he was doing a life sentence. You know that he was  
23 involved in an assault on another inmate in 2005.  
24 And you know what Ms. Upshaw told you, that two days  
25 before the Molina homicide, she completed a

1 reclassification scoring form. And who cares what  
2 the score is? The point is that as of that date,  
3 Mr. Sanchez -- the answer to question 9, gang  
4 membership or activities in the past 10 years,  
5 answer: No. 3/7/2014, no gang activities.

6 Now, Ms. Upshaw was questioned about  
7 whether 3/7/2014 is 10 years after 11/14/05. I  
8 mean, nine years, ten years -- does it really  
9 matter? I think the point has been made.

10 Mr. Sanchez is living in a Level 4 unit.  
11 He's living in a unit that has -- where he has more  
12 tier time, he has more privileges than he had  
13 before. And who is there with him? His brother.

14 You also heard testimony that on multiple  
15 occasions prior to the Molina homicide but around  
16 the time of the Molina homicide, there were people  
17 lobbying for acts of violence to be done on other  
18 inmates. And what did Mario Rodriguez tell you?  
19 That Mr. Sanchez defused those conflicts. He did  
20 not order, allow, or encourage physical violence.  
21 And Mario Rodriguez thought Mr. Sanchez was weak  
22 because of that.

23 Everybody in prison knew that if there is  
24 somebody killed in the unit, things are going to  
25 change. People are going to be moved to more

1 restrictive settings. People are going to be  
2 isolated. People are going to lose privileges.  
3 People are going to lose all sorts of stuff. Is  
4 that something the evidence shows Mr. Sanchez was  
5 willing to risk?

6 Mr. Castellano showed you some video from  
7 the crime scene -- or from the crime. And you'll  
8 have a chance to look at that. And it shows Mr.  
9 Sanchez standing there looking up toward the room  
10 where Javier Molina was killed. And I just have a  
11 couple of comments about that. Number 1, these pods  
12 are small. Obviously, the video doesn't have sound,  
13 but there is noise associated with altercations,  
14 associated with stabbing somebody, and there was  
15 noise, the evidence shows, in the crime of the  
16 killing of Javier Molina. And anybody in that pod  
17 would be able to hear the noise. And if you're  
18 human and there is noise, you generally tend to look  
19 for what the source of it is.

20 The other thing I want to point out to you  
21 is: Jury instruction number 33, which talks about  
22 aiding and abetting, said very clearly, "Mere  
23 presence at the scene of a crime and knowledge that  
24 a crime is being committed are also not sufficient  
25 to establish aiding and abetting."

1           So the fact that Mr. Sanchez was present  
2     in the unit and knew that there was a crime  
3     happening or that something was happening is not  
4     sufficient to show that he was an aider and abettor.  
5     And the instruction goes on to say that evidence of  
6     a defendant's membership in a gang by itself is  
7     insufficient to establish that person's guilt as an  
8     aider and abettor. The fact that he's there, and he  
9     noticed and he realized that something was going  
10    on -- that's not aiding and abetting. And look at  
11    the conspiracy instruction. It's not a conspiracy,  
12    either.

13           There has been a lot of talk about Ronald  
14    Sanchez and this meeting that Mario Rodriguez set up  
15    with Ronald Sanchez. I trust that you guys listened  
16    and heard the testimony on that. But if there is  
17    any question about Ronald Sanchez's motives, I think  
18    they were told to you, at least to some extent, by  
19    Mario Rodriguez. And I believe in that testimony  
20    what Mario Rodriguez said was that Ronald Sanchez  
21    was trying -- was hoping that if his brother worked  
22    something out, that he could benefit from it, that  
23    he could get a release date from the New Mexico  
24    State Prison.

25           I'm almost done, Your Honor. Do you want

1 me to just keep going?

2 THE COURT: It's up to you.

3 MS. JACKS: That's fine. I will. If you  
4 don't mind, I have about five more minutes.

5 THE COURT: All right.

6 MS. JACKS: I was thinking over this  
7 weekend about how the Government put its case  
8 together. And I was actually reminded of a scene in  
9 an old movie where a very lovely Ann-Margret is  
10 putting together a jigsaw puzzle. And she's putting  
11 together a jigsaw puzzle with a file and a pair of  
12 scissors. The movie is "Cincinnati Kid," and I just  
13 pulled a clip from it that I thought was sort of  
14 pertinent to what has happened here in this  
15 courtroom. I'm just going to play it. Is there  
16 sound?

17 (Video clip played.)

18 I'm going to submit to you that the  
19 Government has used the equivalent of the file and  
20 scissors to shape the testimony in this case against  
21 Mr. Sanchez. And just like Ann-Margret, they're  
22 determined to have you say it fits.

23 If that's the case -- I'm almost done; I  
24 just have a couple more minutes -- and I know, this  
25 happens every time, as soon as I sit down, I'll

1 think of like three things I wanted to talk about  
2 and forgot to talk about. It never fails.

3 So I guess I just want to remind you or  
4 tell you, if you don't know, that I don't get to  
5 argue again. I don't care what the Government says  
6 in their rebuttal argument. The rules are, they  
7 have the burden of proof and what goes along with  
8 that is the right to have the last word. So when I  
9 don't get up here and rebut what they say, either  
10 later tonight or tomorrow morning, it's not because  
11 I don't have something to say. It's because I  
12 can't. The judge has to end the argument somewhere,  
13 and that's where it ends.

14 So I just hope that during your  
15 deliberations you don't assume that because I didn't  
16 get up and rebut the points that they may attempt to  
17 make, it's not because there isn't rebuttal and it's  
18 not because I don't have anything to rebut it with.  
19 It's because I can't.

20 The other thing I just want to comment on  
21 is that -- and I don't think any of us have talked  
22 about it, any of the defense lawyers have talked  
23 about it today -- is that while this is a joint  
24 trial, each defendant here, including Mr. Sanchez,  
25 has a right to have you consider the case against

1    them or him individually, which means -- and with  
2    the evidence that was admitted as to him, as  
3    difficult as that may be.

4                   And nobody here chose to be tried in a  
5    joint trial. That is a ruling that was made and  
6    that was how we were told the trial was going to be  
7    conducted.

8                   And I guess I just want to say, you know,  
9    you've seen the defense lawyers conferring about  
10   things. And just the practicalities of having four  
11   defendants on trial at the same time, there are  
12   things that we have to talk about and that we have  
13   to confer about just to make the trial work. And it  
14   doesn't mean that we're all in the same boat, and it  
15   doesn't mean that we all agree with everything  
16   that's happened and everything that everybody else  
17   has done during the course of this trial. Just sort  
18   of a -- it's a consequence of a joint trial.

19                   Finally, I guess I want to say that  
20   Mr. Jewkes and Mr. Sanchez and I appreciate your  
21   conscientious attitude toward this proceeding. I  
22   know nobody was happy about being selected as a  
23   juror, and we want to continue to support your  
24   conscientiousness. We all think that if you use the  
25   facts presented to you, the law as it's been stated

1 to you by the Court, and your common sense, that you  
2 can reach a verdict in this case that reflects truth  
3 and justice.

4 As I said at the beginning of trial, it's  
5 supposed to be a search for the truth. And the  
6 truth is: The Government witnesses can't be  
7 believed beyond a reasonable doubt. And the truth  
8 is that the Government lacks convincing  
9 corroboration for the stories you heard from those  
10 witnesses on that witness stand. The stories about  
11 the paperwork were inconsistent, but consistently  
12 wrong about the crime that Molina had committed that  
13 supposedly generated this paperwork.

14 The property inventory records show that  
15 no legal paperwork was transported with Mr. Urquizo,  
16 and there is no corroborating evidence, there is  
17 nothing, that shows that Urquizo got his property  
18 before the Molina homicide.

19 There is no yard time for Mario Rodriguez  
20 to make the weapons as he testified here in court.  
21 There is no video of the supposed passing of  
22 paperwork from yellow pod to blue pod. And you  
23 heard at least that the camera in blue pod that  
24 covered that door wasn't functioning or was  
25 producing an image of poor quality. But the camera



1 in yellow pod that captured that same door was  
2 working perfectly that day.

3 Any reason to doubt is a reason to doubt.  
4 And the truth is: There's a lot of reasons to doubt  
5 the truth of the Government's charges. The  
6 Government has failed to prove the case against Mr.  
7 Sanchez beyond a reasonable doubt. And the truth  
8 is, Mr. Sanchez is not guilty of the crimes charged.

9 THE COURT: Thank you, Ms. Jacks.

10 Let me see counsel up here at the bench.

11 (The following proceedings were held at  
12 the bench.)

13 THE COURT: I guess the question is: What  
14 would y'all like to do? Now, do y'all want to push  
15 them a little bit and kind of give them fair warning  
16 on Friday night?

17 MS. ARMIJO: We would prefer tomorrow  
18 morning, just because they're so tired now. I would  
19 need to print out --

20 THE COURT: I think to be fair to  
21 everybody, I pushed the defendants a little bit, I  
22 need to push y'all a little bit. If you want a  
23 little bit of a break, I'll take a little bit of a  
24 break to get you set up. And how much longer do you  
25 think you have?

1 MS. ARMIJO: I have allowed 44 minutes.  
2 He took one for me.

3 THE COURT: I got 43, so I'll give you 43.  
4 How much of a break do you want?

5 MS. ARMIJO: Ten minutes, because I have  
6 to print.

7 MR. JEWKES: So we're going to go to 8:00,  
8 9:00 tonight?

9 THE COURT: Right. Go 43 minutes.

10 MR. JEWKES: So the Government can close  
11 finally.

12 (The following proceedings were held in  
13 open court.)

14 THE COURT: All right. What we're going  
15 to do is we're going to take a 10-minute break, and  
16 then we're going to come back in and let the  
17 Government finish its rebuttal. It will take about  
18 43 minutes. I'll time it, then we'll be done. I'll  
19 give you a couple instructions, and I'll let you go,  
20 and you can kind of then decide what you want to do  
21 tonight.

22 So let's take a 10-minute break. I know  
23 we're getting late, but I want to give these  
24 instructions again. Until the trial is completed,  
25 you're not to discuss this case with anyone, whether

1 it's members of your family, people involved in the  
2 trial, or anyone else. And that includes your  
3 fellow jurors.

4 If anyone approaches you and tries to  
5 discuss the trial with you, please let me know about  
6 it immediately.

7 Also, you must not read or listen to any  
8 news reports of the trial. Again, don't get on the  
9 internet and do any research for purposes of this  
10 case.

11 And finally, remember that you must not  
12 talk about anything with any persons involved in the  
13 trial, even if it doesn't have anything to do with  
14 the trial.

15 If you need to speak with me, simply give  
16 a note to one of the court security officers or  
17 Ms. Standridge.

18 We'll see how the evening goes here, what  
19 you want to do. But let's take about a 10-minute  
20 break and then we'll come back in and hear the  
21 Government's rebuttal.

22 All rise.

23 (The jury left the courtroom.)

24 THE COURT: All right. We'll be in recess  
25 for about 10 minutes.

1 (The Court stood in recess.)

2 (The jury entered the courtroom.)

3 MS. ARMIJO: All right. I appreciate the  
4 jury's patience. I appreciate you working with us.

5 Ms. Armijo, do you have rebuttal for the  
6 Government?

7 MS. ARMIJO: I do, Your Honor. May it  
8 please the Court.

9 THE COURT: Ms. Armijo.

10 MS. ARMIJO: How do you feel about that?  
11 That was the question that was posed to you by  
12 Ms. Jacks just now. And I believe Ms. Bhalla also  
13 said the Government chose to work with these  
14 witnesses on this case. That's what was kind of  
15 thrown down to the Government just now.

16 But one thing that you must realize in  
17 this case -- and I think all of you do realize in  
18 this case -- is that the Government did not choose  
19 these witnesses. All of these defendants chose  
20 these witnesses because they are all part of the SNM  
21 Gang. We did not -- unlike Mr. Sanchez, who picked  
22 Mario Rodriguez, Tim Martinez -- I guess it's  
23 probably easier to say their names Blue, Red, Plaz,  
24 and the rest of them, Crazo -- he picked those  
25 people to go and, as they put it, to be the killers

1 in the case. Not the Government.

2 Each of the witnesses that you heard --  
3 and Mr. Baca showed you a picture of nine of them --  
4 there are actually 16 witnesses that you heard from  
5 the Government that were SNM Gang members. Those  
6 people were picked by these defendants and others.  
7 And so the Government did not choose these  
8 witnesses. They did.

9 And we would love to have pristine  
10 witnesses on the stand that don't have any criminal  
11 history. But when you cast a play in hell, you  
12 don't have angels as witnesses and actors. What you  
13 have is what you get. And when you have crimes that  
14 occur in prison, you're going to get inmates, you're  
15 going to get people with criminal histories, and  
16 you're going to get people that are violent.

17 So that is what you have before you in  
18 this case. So when you think about that, there are  
19 things that you should consider. But consider who  
20 it is that brought the people before you. And it  
21 wasn't the Government.

22 Now, a lot was said about -- a lot of  
23 questions. And I'll start -- I'll try and go -- I  
24 think I'm going to go backwards, because that's the  
25 most recent thing that you just heard.

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1 Ms. Jacks showed you a lot about -- asking  
2 you questions about the truth and fairness. I'm  
3 going to ask you: Where in the jury instructions  
4 does it say that this has to be fair? Or where is  
5 it that the truth -- the jury instruction says that  
6 you -- and I'm referring to jury instruction number  
7 1 -- "You, as jurors, are the judges of the facts."  
8 You're the judges of the facts that are put before  
9 you. And then you apply those facts to the law at  
10 arriving at your verdicts. You don't get to say:  
11 "Well, what's fair? What is justice?" That's not  
12 in the jury instructions. You need to focus in on  
13 what's before you. And although Ms. Jacks asked you  
14 a lot of questions about, you know, what should you  
15 be thinking, all of that is an attempt to have you  
16 keep your focus away from what Daniel Sanchez did do  
17 in this case.

18 You heard a lot about the property sheets,  
19 and there was a lot of testimony about that, but  
20 that was because even their own witness, Mr.  
21 Brewster, indicated that there was no reliability in  
22 that paperwork. And so when you look at that --  
23 and, in fact, you're missing some of that paperwork.  
24 You only have half of the paperwork. And so that is  
25 something to consider.

1           She tried to make a great deal about all  
2 these timelines and everything. And it's kind of  
3 like -- I'm sure every single one of you has had --  
4 has seen -- has witnessed an event that may be  
5 important, with other people. And when you go back  
6 and you start thinking about that event, there are  
7 certain things that are important to one person than  
8 another. But people will have different memories  
9 about little things that may not be as important.  
10 And in doing so, that seems right. I don't know if  
11 any of you used to play that game -- I think it used  
12 to be called "Telephone." You say one thing, and  
13 then it goes all the way around, and then by the  
14 time you get all the way around, it's something  
15 that's a little bit different, but probably has the  
16 main idea, and all that. And again, you have to  
17 concentrate on what was actually said before you,  
18 and not guessing at what is not before you.  
19 Because -- and that's the other thing that the jury  
20 instructions will say: Testimony is evidence.  
21 Despite the fact that they want to wipe out the fact  
22 that there was no -- that certain things did not  
23 come from those witnesses' chair, that is evidence  
24 in this case.  
25           And what you did hear Ms. Jacks talk about

1 was her client's statements. Because we do have  
2 statements from her client. We have statements that  
3 he told Timothy Martinez, as I told you at the very  
4 beginning of this trial, where he indicated that the  
5 S is about violence, and the S gets respect through  
6 violence, and how he wants to take it back to the  
7 old days.

8 We heard from Mario Rodriguez about how he  
9 is not the shot-caller. It was Daniel Sanchez, and  
10 how intimately he was involved. And you can go back  
11 and look at Ms. Jacks' timeline where I went back  
12 and I put other people that were involved. And the  
13 reason I did that is because it's important to see  
14 all -- how everyone was involved, and who the person  
15 was that was the shot-caller that day. The person  
16 that was the shot-caller in that pod was Daniel  
17 Sanchez.

18 And what do you have -- why is that video  
19 important? The video is important because it  
20 corroborates some of what Mario says. If you  
21 recall, Mario said that the plan was initially to  
22 knock Javier Molina out, to punch him. But Tim  
23 Martinez thought it might be better to choke him  
24 out.

25 So you actually see on the video -- I



1 think it's camera 5, the second -- whatever the  
2 second view is, I believe it's camera 5 -- where he  
3 goes, and you actually see him going down and  
4 conferring with -- Mario Rodriguez and Daniel  
5 Sanchez conferring together right before the murder  
6 occurs; again, showing that the person that's in  
7 charge is Daniel Sanchez.

8 And you do see Daniel Sanchez turning  
9 around and looking up, clear as day on the camera --  
10 a good alibi that he's not involved, but he wants to  
11 make sure that it gets done. And there's other  
12 people there that are not looking up. If everybody  
13 could hear, they're not all looking up. In fact, as  
14 you recall, there was somebody walking down the  
15 stairs as if nothing is happening. The person  
16 that's interested the most, though, is the one that  
17 is calling the shots that day, and that is Daniel  
18 Sanchez.

19 The testimony last Friday. Ms. Jacks was  
20 telling you about thinking about that the Government  
21 basically is corrupt. She put the picture of the  
22 FBI up with the three monkeys. If that's the case  
23 and the Government is corrupt, then why would the  
24 box of evidence and everything else be turned over?  
25 I mean, wouldn't it make sense that the FBI just

1 hide it? And it's because we are making every  
2 effort to get evidence out.

3 Let's see. The making of the shanks. I  
4 believe Mario Rodriguez testified that he actually  
5 made shanks and finalized them when it was the count  
6 time, when count was done. And count was done  
7 before 4:00 and 5:00. And that's done every single  
8 day. And that's when he made it.

9 And the phone rec -- I believe there is  
10 testimony, there is evidence, that phone rec is not  
11 the regular rec; that that's kind of done internally  
12 as opposed to outside. We do know that the shanks  
13 were made, though, because we have shanks. So he  
14 clearly did make shanks.

15 Ms. Jacks played you a nice video from an  
16 old film, but you notice that she didn't play the  
17 video that showed her client looking up? Wouldn't  
18 that be more relevant to what is going on here?

19 Now, Mr. Herrera. Mr. Herrera -- Ms.  
20 Bhalla stood up here and told you about how she  
21 was -- her personal views about the witnesses and  
22 things that she could not believe about the  
23 witnesses. But you have to remember that what the  
24 lawyers say and their own opinions -- my own  
25 opinion -- in fact, I'll try to keep my opinion out,

1 but I'm not going to say "I believe this" or "I  
2 believe that," because you're not supposed to. What  
3 you are supposed to do is argue the facts that are  
4 before you. So keep that in mind when you're  
5 thinking about all of that.

6 And she was very flip about the witnesses  
7 and the fact that they're not dead now, which is in  
8 contrast to the housing. Now, she put up some  
9 flowers up there about the housing. The first  
10 flower was just flat-out wrong, because it indicated  
11 that Lupe Urquizo and Robert Martinez and somebody  
12 else were together.

13 Well, Lupe Urquizo was never held at  
14 Torrance. I mean, there was just information on  
15 there that she had up for a long time that was just  
16 flat-out wrong, because Lupe Urquizo and Robert  
17 Martinez and Mario Rodriguez were never held  
18 together at Torrance. So that's just flat-out  
19 wrong.

20 The second thing about that is that they  
21 were housed together because of security reasons.

22 We are here because somebody gave a  
23 statement to police that was dry-snitching, that  
24 basically said, "I didn't do it, but there's other  
25 people involved and he was killed. And he wasn't

1 killed in 2009, when the crime occurred, or when the  
2 statement was given. He was killed five years  
3 later."

4 So, yes, it is flippant of her to say that  
5 the witnesses that are up here are not dead yet.  
6 They each, by signing up, have given themselves a  
7 death sentence. Regardless of what sentence Judge  
8 Browning gives them, regardless of any reduction  
9 they get, they all have a death sentence by the SNM  
10 that will carry with them throughout their lives.

11 So you should take issue with that, and  
12 the fact that her reasoning that they're not dead  
13 yet, and the reason that they're housed together is  
14 for their safety.

15 And several -- a lot of defense  
16 attorneys -- and this goes for a lot of them -- were  
17 painting broad brush strokes about all of the  
18 witnesses. They all had tablets and conferred. You  
19 know that's not true, because certain witnesses,  
20 Billy Cordova -- people that were not charged did  
21 not have tablets.

22 They also said that they were all housed  
23 together. Well, Jake Armijo is not part of this  
24 case, and Jake Armijo was not housed with these  
25 people. So you simply can't do that. Consider each

1 witness' testimony separately, because they all are  
2 separate. And you can't just make these statements.

3 Not all of them were involved with having  
4 sex. Not all of them. I mean, I don't think Baby  
5 Rob had any issues as far as his tablet. It wasn't  
6 taken away. So again, you can't just lump everybody  
7 into a group, because they're all different  
8 individuals.

9 Now, Exhibit 194. I believe Ms. Bhalla  
10 wanted the proof. And you have a lot of recordings,  
11 a lot to listen to. And we apologize for that. But  
12 it was important for you to get all of the evidence  
13 in. But in Exhibit 194 -- and it's towards the  
14 beginning, since this is the transcript, and here's  
15 the portion. Mr. Herrera specifically says,  
16 "Spider, all of us -- Spider, all of us, Blue, all  
17 of us, carnal, made the decision, carnal, that it  
18 has to be legit."

19 He is talking there about Javier Molina  
20 directly. He's talking about needing the paperwork.  
21 He's talking about it. And he goes on and on  
22 talking about it. So you will have that with you.  
23 You'll be able to go and listen and look about what  
24 he says specifically about his involvement in what  
25 he showed you.

1           And if you recall, I think that Roy  
2 Martinez didn't say anything about -- Roy Martinez  
3 wasn't at Southern. He doesn't know what happened  
4 at Southern when the murder occurred. And so we  
5 know the paperwork went down there before, and the  
6 job didn't get done. We heard about that through  
7 other witnesses, including Javier Rubio.

8           There is another witness. Javier Rubio.  
9 No tablet, never housed, at least for long periods  
10 of time, with these people. So, in fact, Carlos  
11 Herrera did, in fact, make statements about that.

12           She indicated that people never mentioned  
13 Carlos. Jake Armijo -- he wasn't in custody at the  
14 time.

15           Again, listen to the recordings in this  
16 case. Bobby Delgado. An important thing to  
17 remember about Bobby Delgado is: He said that tier  
18 time was one at a time. That's just wrong, because  
19 you have a video to contradict that. You have a  
20 video of the murder that shows that everybody was on  
21 tier time together. And he even said if it was  
22 consistent with one pod -- so if the blue pod had  
23 all tier time together, then so would yellow pod.  
24 So we know what he testified was incorrect about  
25 that.

1 She also said people saying stuff is not  
2 evidence. That's not what the jury instructions  
3 will tell you. I'll go over the jury instructions  
4 in a moment.

5 Now, Rudy Perez. Rudy Perez -- Mr. Villa  
6 came up here and told you that the most important  
7 thing for you to consider were certain things, but  
8 basically, he asked you to violate your oath as  
9 jurors. He asked you to consider punishment, which  
10 is just flat-out wrong, because you can't consider  
11 punishment. And in fact -- hopefully I brought it  
12 up. Yes, I did. It is jury instruction number 35.

13 May I please have the Elmo, Ms.  
14 Standridge? Oh, wait, that's not it. But I still  
15 need the Elmo. Maybe I didn't bring that one up.

16 He asked you basically, first off, about  
17 whether or not it was fair about other people, about  
18 anyone who was not -- about other people -- about  
19 Mario Rodriguez, if it's fair that he would get a  
20 lightened sentence, and went on and on about other  
21 people charged and whether or not that was fair.

22 But you have jury instruction number 35,  
23 which talks about other people. And it's not up for  
24 you to decide whether anyone who is not on trial in  
25 this case should be prosecuted for the crimes

1 charged. There you have it. You're not supposed to  
2 be considering that. And that's one of the things  
3 that he directly asked you to do.

4 The other thing that Mr. Villa asked you  
5 to do was basically decide this case -- we heard a  
6 lot about it, and again I'm going to jury  
7 instruction number 2 -- was a lot about sympathy.  
8 Poor Mr. Perez. He's the victim in this case. He  
9 didn't have a choice. He had to give it up. He's a  
10 victim of the SNM, basically. And you heard almost  
11 a day's testimony from the doctor about his health  
12 conditions. But you took an oath -- and I know Mr.  
13 Beck asked you this -- that you would decide this  
14 case without prejudice or sympathy. And right  
15 there, Mr. Villa was asking you to decide this case  
16 for sympathy.

17 The other thing he was asking you to do --  
18 jury instruction number 36 is about punishment,  
19 because he was talking about punishment in this  
20 case. And you're not to decide this case based upon  
21 punishment, either. It's right there. Jury  
22 instruction number 36.

23 So several things that Mr. Villa asked you  
24 to do you simply can't do, because the jury  
25 instructions won't let you.



1           And in reference to Mr. Perez, first I'm  
2 going to go to Government's Exhibit 180, and I'm  
3 going to put the transcript up here. And you will  
4 see here in Exhibit Number 180 where he talks about  
5 the paperwork. And he even admits he's got the  
6 paperwork a year before. That's when he told me,  
7 "Hey, we got it, yes, but we're not gonna show it,  
8 so you just make sure you show me some love, no?"

9           He's admitting there that he got -- that  
10 the paperwork was there before, and that he was  
11 told: "We got the paperwork; we're not going to  
12 show it to you."

13           And one of the most important things that  
14 I'll also mention that Mr. Villa left out of the  
15 whole thing with Mario Rodriguez was the fact that  
16 Daniel Sanchez was there in the cell before. We  
17 heard from Mario Rodriguez how he saw Daniel Sanchez  
18 talking to him. Daniel Sanchez waved him over. And  
19 he was inside the cell. And Daniel Sanchez is the  
20 one that directed him to take it. And then, when he  
21 turned around, Daniel Sanchez was gone. So we know  
22 that there is more conversation. We don't know what  
23 it was, but we know that Daniel Sanchez was in there  
24 talking to Rudy Perez. So Rudy Perez talks about  
25 here how he says that, "He told me, hey, we got it,

1 yes."

2           Then I'm going to refer to Exhibit Number  
3 176. This one is a short recording, so you won't  
4 have to go very far. And it's actually towards the  
5 end, I believe, and here -- sorry, I have to see.  
6 He talks about it and Rudy Perez says, "If I can't  
7 put work in for the family, I gotta be willing to be  
8 able to do my part, no matter how little or how big.  
9 You feel me?"

10           Billy says, "Yeah, si mon."

11           And then they go on to talk about it. He  
12 says, "I'm not going to give that no more, but I --  
13 before -- I told him, is it a justified move, both  
14 of them, so we got the paperwork."

15           So he's telling Billy that he is asking  
16 about the paperwork. And then he goes on, they talk  
17 about it, is it a justified move, and not just a  
18 dopey move, meaning is it justified? So he says,  
19 "When he asked you for the pieces of your walker."

20           Well, who asked for the pieces of the  
21 walker? And then he says, "Is it a justified move?  
22 You feel me?"

23           And then he basically goes on to talk  
24 about that. And he says that he wanted to make sure  
25 it was -- that wouldn't have been a family move;

1 that would have been a personal move. So he is  
2 making sure here in this conversation, he admits  
3 that he was told that he knew it was a justified  
4 move, that they had the paperwork, and the only  
5 person that spoke to him about it before the shanks  
6 were got was Daniel Sanchez.

7 So you do have evidence before you. You  
8 have recordings before you in reference to exactly  
9 what he knew. So consider all that when you  
10 consider the evidence against Rudy Perez.

11 And the doctor's testimony. The doctor  
12 indicated and came up here and was talking to you  
13 about Rudy Perez' medical health and everything  
14 else. Consider her credibility, her 27,000 two days  
15 before, the three days that she was here in court,  
16 at I think a few hundred dollars an hour. Consider  
17 her testimony. Because she did not tell you that he  
18 had antisocial personality disorder. And that's one  
19 of the things that she left out completely of her  
20 testimony. And when I started asking her about  
21 that, she didn't want to go there, because, as we  
22 pointed out to her, antisocial personality disorder,  
23 which he's had throughout his evaluations, is the  
24 same as a sociopath. It's a psychopath. It's  
25 someone who has no regard for the violent crimes

1 that they commit. And she even had to admit, after  
2 she was just kind of poo-pooing it and saying,  
3 "Well, it just kind of carried on. I didn't really  
4 give it that much weight." What did she really say  
5 when I pointed out to her that he had made  
6 statements that were consistent with that finding in  
7 more recent years?

8 So consider why they gave you that  
9 testimony. It was just sympathy. But it certainly  
10 wasn't helpful, because she didn't even listen to  
11 the recordings. She couldn't tell you he had a  
12 seizure. And you listen to the recordings yourself,  
13 and you make that determination.

14 And lastly, we have Anthony Baca. Anthony  
15 Baca. It was interesting because the one thing you  
16 didn't hear about was the Dwayne Santistevan count.  
17 She didn't ask you to find him not guilty of that,  
18 too. So that should be a given.

19 When you go back to the jury room, they  
20 didn't even ask you to find him not guilty of that  
21 count. So that's something that should just be a  
22 given for you. What they indicated was, over and  
23 over, that Armenta was taking -- that the reason  
24 that he wanted Armenta's family hit, because it was  
25 a hit for the brothers. Well, so was Javier Molina.

1 He was hit for the same reason. It was a hit for  
2 the brothers. And you will see, when you listen to  
3 all those recordings, that a lot of what he talks  
4 about over and over and over is what he must do.

5 And -- oh, my gosh, I can't remember --  
6 I'm having a mind blank as to Eric Duran's Facebook  
7 pages. All those crazy and goofy pictures. Do they  
8 really want you to believe that Eric Duran could  
9 coerce Anthony Baca, the leader of the SNM, into  
10 making statements against his will? Do they really  
11 want to make you believe that he has that sort of  
12 power? Because even every single witness that did  
13 testify, including Urtiaga, Lieutenant Urtiaga, who  
14 came in and testified about Eric Duran and  
15 criticized him and said he felt threatened by Eric  
16 Duran, said he was not a leader in the SNM. We know  
17 that he was far from being a leader in the SNM. And  
18 here he is right next to the leader of the SNM. And  
19 when you go back and you listen to those, testimony  
20 like Mario Rodriguez explained to you, things that  
21 Anthony Baca told him, you will hear Anthony Baca  
22 talk about it, the rayos and restructuring and all  
23 of that. Do you really think that goofy Eric Duran  
24 could really convince that and do that to Anthony  
25 Baca, the leader of the gang?

1           And the jury instruction that Ms. Duncan  
2 pointed out to you, one of the things that wasn't  
3 focused in on -- this is jury instruction number 4,  
4 "However, where Mr. Baca was ready and willing to  
5 commit the crime at the time of the first contact  
6 with the Government agent, the mere fact that the  
7 Government agent provided what appears to be an  
8 opportunity to commit the crime is not unfair  
9 inducement."

10           Mr. Baca certainly was ready and willing  
11 to commit the crime. Even if you don't even believe  
12 him that he was wanting to do it in the year 2013,  
13 that it just started in the year 2015, he was ready  
14 and willing. He had Chris Garcia provide this  
15 firearm to kill Gregg Marcantel. That is certainly  
16 ready and willing to do so.

17           The other thing that was pointed out, jury  
18 instruction number 33, and I believe this applies to  
19 both Mr. Perez' and Mr. Baca's arguments, it talks  
20 about they need not perform the underlying criminal  
21 act, be present when it is performed, or be aware of  
22 the details of its commission to be guilty of aiding  
23 and abetting. That's very important for you to  
24 consider, especially when you have people calling  
25 shots that aren't there. But more importantly --

1 and I think we've proved to you exactly that Mr.  
2 Perez did, in fact, know. But also Mr. Baca, as  
3 well.

4 Eric Duran, that last thing I would say  
5 about him is: Listen to the recordings. It would  
6 be one thing if we didn't have the recordings in  
7 regard to Eric Duran. But we do have the  
8 recordings. You need to go and sit down and listen  
9 to them. And again, put it in context who Eric  
10 Duran is and who Anthony Baca was when those  
11 recordings are believed.

12 Jury instruction number 12 talks about the  
13 testimony of an informant alone, if believed by the  
14 jury, may be sufficient weight to sustain a verdict  
15 of guilt, even though not corroborated or supported  
16 by other evidence. The testimony of an informant  
17 alone is enough, even if not supported. But in this  
18 case, you have it supported. And you have not just  
19 one, you have 16 people that came and testified to  
20 you that were members of the SNM.

21 Now -- all right. Lastly, in regard to  
22 Anthony Baca -- sorry, I'm checking my time --  
23 Exhibit 348 is going to be an important one for you  
24 to consider, because 348, as you may recall the  
25 testimony, was the very last recording that was done

1 by Eric Duran. It was a recording that was done on  
2 December 3, the morning of the takedown. It was an  
3 early morning recording. And what we have in there,  
4 specifically, we have Anthony Baca being anxious for  
5 the news, talking about how important -- how big it  
6 was going to be. And we have Anthony Baca talking  
7 about Jerry Armenta, and that -- and remember, it's  
8 not federal yet, but they have some inclination that  
9 it's going to be a federal case because the state  
10 case against the Molina defendants that were charged  
11 was dismissed, and it said in lieu of federal  
12 charges. So people knew that there was going to be  
13 something coming down.

14 So what Pup says -- it says, "Pup, now,  
15 they're going to go ahead and do us with the feds,  
16 then his family fucken -- they need to fucken move  
17 today. That's it."

18 And he keeps talking about how Armenta's  
19 family will be hit. And he says about Gregg  
20 Marcantel, "Man, I got up at -- I fucken woke up --  
21 I fucken -- at fucken 4:30. I'm, like, what the  
22 fuck. And then I fucken turn on the news, and I'm  
23 fucken watching it. And nothing, you know? But  
24 I'm -- like fucken started moving around. And I  
25 don't know, 15 till 5:00."



1 And he keeps talking about how he's  
2 watching the news, trying to see if this is going to  
3 happen.

4 So this shows -- and lastly, right towards  
5 the end, he says, "The boys are getting tired of his  
6 fucken scandalous ass shit, carnal. Brothers are  
7 getting discouraged, frustrated, fucken just like  
8 fucken, this shit is fucken whacked. We'll always  
9 have a brother that's always trying, always there on  
10 some petty ass shit fucken trying to get brothers  
11 against each other all the time. It never fails,  
12 carnal. There's always somebody there. We can't  
13 have that shit all the time." Again, showing who he  
14 is, and his power, and what he wants to get done.

15 Now, the prosecution wants to thank you  
16 for your time as well. I know it's been a difficult  
17 case. I know there were a lot of times we  
18 approached the bench and left you hanging out there.  
19 As you know, there are things that the judge ruled  
20 on that you could hear, that you couldn't hear. We  
21 would ask you again to take the evidence that you  
22 did hear; don't consider things or guess at things  
23 that you weren't supposed to. Don't read things  
24 into the jury instructions. Follow the jury  
25 instructions.

1 And as Javier Molina would say, "I am  
2 done. I am done." We want you to send a message to  
3 these four defendants by finding them guilty as they  
4 are charged, that the SNM should be done, and that  
5 they're guilty as they have been charged in this  
6 case.

7 MS. JACKS: Your Honor, I object. Sending  
8 a message to the defendants is not the province of  
9 the jury. I think that's misconduct to argue it.

10 THE COURT: Let's not argue about sending  
11 a message. They just follow the instructions.

12 MS. ARMIJO: Above all else, follow the  
13 instructions, follow what the instructions say. And  
14 I think that's probably one of the most important  
15 parts that can be brought out to you at this point,  
16 because you've heard a lot about what you should do,  
17 what you shouldn't do, what they should say about  
18 justice and truth. But the fact is: You need to  
19 follow the instructions and find them guilty.

20 Thank you.

21 THE COURT: Thank you, Ms. Armijo.

22 All right, ladies and gentlemen, we are at  
23 the close of the case. I'm going to give you a  
24 couple of instructions and then I need to do one  
25 other thing which you probably have guessed I need

1 to do before I turn the case over to you.

2 But since we are at the close of the case,  
3 let me give you this instruction. During your  
4 deliberations you must not communicate with or  
5 provide any information to anyone by any means about  
6 this case. You may not use any electronic device or  
7 media such as the telephone, a cellphone smartphone,  
8 iPhone, BlackBerry or computer, the internet, any  
9 internet service, any text or instant messaging  
10 service, any internet chat room, blog, or website  
11 such as Facebook, MySpace, LinkedIn, YouTube, or  
12 Twitter to communicate to anyone any information  
13 about this case or to conduct any research about  
14 this case until I accept your verdict. In other  
15 words, you cannot talk to anyone on the phone,  
16 correspond with anyone or electronically communicate  
17 with anyone about this case. You can only discuss  
18 the case in the jury room with your fellow jurors  
19 during deliberations. I expect you will inform me  
20 as soon as you become aware of another juror's  
21 violation of these instructions.

22 You may not use these electronic means to  
23 investigate or communicate about the case, because  
24 it is important that you decide this case based  
25 solely on the evidence presented in this courtroom.

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1 Information on the internet or available through  
2 social media might be wrong, incomplete, or  
3 inaccurate.

4           You are only permitted to discuss the case  
5 with your fellow jurors during deliberations because  
6 they have seen and heard the same evidence you have.

7           In our judicial system it is important  
8 that you are not influenced by anything or anyone  
9 outside of this courtroom. Otherwise, your decision  
10 may be based on information known only by you and  
11 not your fellow jurors or the parties in the case.  
12 This would unfairly and adversely impact the  
13 judicial process.

14           The exhibits admitted during the course of  
15 the trial have been electronically captured to allow  
16 you to view the evidence on the monitor in the jury  
17 deliberation room. This system used to view the  
18 exhibits is called JERS, and I never liked that name  
19 because when you're from Hobbs, it's hard to say  
20 "jurors" and "JERS" and make it sound different.  
21 But JERS is J-E-R-S. It's Jury Evidence Record  
22 System.

23           Before you begin your deliberations, you  
24 will be shown a two-minute tutorial on how to use  
25 the system. The tutorial mentions the possibility

1 of you requesting additional exhibits from the Court  
2 for review and how to update the system for the  
3 requested exhibits to be released to you. You  
4 should disregard that portion of the tutorial, as  
5 there are no additional exhibits to be provided.  
6 You will have immediately available to you all of  
7 the exhibits that have been admitted in this case.

8 If at any point during your deliberation  
9 you experience technical difficult with JERS, please  
10 send a note to the Court for the situation to be  
11 addressed. And if at any point you would prefer to  
12 have a hard copy of the exhibits provided to you,  
13 please advise the Court as well.

14 Now comes the part of the trial that I  
15 least enjoy, because as you have probably guessed  
16 there's 16 of you still in the jury box, and we're  
17 going to have 12 of you deliberate and reach  
18 verdicts in this case. And I know you've all worked  
19 very hard for six weeks, and it's hard to tell some  
20 of you now that you were alternates or are  
21 alternates, but that's the way our system works.

22 So when I ask the jury to go back and  
23 begin its deliberations, Mr. Moore, if you'll stay  
24 in your seat; Ms. Murphy, if you'll stay in your  
25 seat; Ms. Courtier, if you'll stay in your seat; and

1 Ms. Bush, if you'll stay in your seat, I'll talk to  
2 you about what I'm going to do with you while the  
3 jury deliberates.

4 All right. The jury may go to the jury  
5 room and commence its deliberations. If it wishes  
6 to stay tonight, we're at your service. If you  
7 decide you want to go, then you can let us know, and  
8 I'll bring you back in and give you some  
9 instructions before we break for the evening. So  
10 we're at your service.

11 All rise.

12 (The jury left the courtroom.)

13 THE COURT: All right. Everyone be  
14 seated.

15 Counsel and I have been anticipating this  
16 moment, and the parties, and we have agreed that  
17 what we're going to do in this case is that we are  
18 going to leave the alternates under charge. And  
19 what that means is that all the instructions that I  
20 have given you, including these at this very moment,  
21 you are still subject to those charges.

22 And so I ask you to think about that, what  
23 that means. And for you, you cannot talk to even  
24 each other about this case. If somebody were to get  
25 sick, if we were to lose somebody back there, as you

1 know, we put in a lot of effort into this case. You  
2 have and they have. And just as this morning we  
3 came in and we lost a juror.

4 So we might insert you into the process,  
5 ask the jurors to start over, and so we're going to  
6 keep you under charge and keep you just as pristine  
7 and just operating under the same instructions that  
8 I've given you. So if you will do that, I would  
9 appreciate it. If the jurors decide that they want  
10 to go home, we'll certainly let you go home. But  
11 tomorrow you'll need to be back here when I tell the  
12 jury they need to be back.

13 So I'll just have to ask you to continue  
14 to do what you've been doing for us, and Ms.  
15 Standridge will now take you to a location where you  
16 will stay for a little bit, and then we'll certainly  
17 make sure that if you need to be here tomorrow,  
18 you're in a good, comfortable position and if you'll  
19 just continue to do what we've asked you to do, I  
20 would appreciate it very much.

21 That is the Court's instructions.

22 All right. All rise. Ms. Standridge is  
23 going to take you down to the second floor jury  
24 assembly room, and that's where you'll be until we  
25 need to get hold of you.

1 (Jury alternates left the courtroom.)

2 THE COURT: All right. Everyone be  
3 seated.

4 All right. When Ms. Standridge comes back  
5 in, if you will work with her to make sure that your  
6 exhibits are all in order, that the JERS is in  
7 order, I know that Ms. Gilbert and the United States  
8 paralegal have all been working very hard, so I  
9 think everything is in order. But just make sure  
10 that it is in order.

11 I passed out to you the copy of the jury  
12 instructions that the jury will receive. Of course,  
13 those have no footnotes on them, so you should have  
14 received a copy right before you did your closings  
15 that have the footnotes and will be the final copy.

16 And then there is a copy then I gave to  
17 you. Your copy I think has a cover page so that we  
18 can file it on CM/ECF, but the one that goes to the  
19 jurors will not. So if you'll take a look at it  
20 just to assure yourself that those jury instructions  
21 are in order.

22 One jury form will go back, so take a look  
23 at it and make sure everything is ordered.

24 Jury instructions. We've already given  
25 them the preliminary. I don't propose to give it



1 again, unless somebody wants it. I would propose we  
2 just go with what we have. But not hearing any,  
3 I'll just leave it with the jury instructions. Take  
4 a look at it. One verdict form.

5 So if you'll stay here, we'll see what the  
6 jury wants to do. If they want to leave for the  
7 evening, then we'll bring them back in and let them  
8 go. If they decide they want to talk a while, then  
9 we will.

10 If you get done here -- I haven't been up  
11 to my chambers, visiting chambers here. I've just  
12 been working out of the vestibule. But if they  
13 decide to hang around, I'd like to see the 11  
14 lawyers up in my chambers if I can find it and  
15 somebody can take me there. And we'll wait a little  
16 bit and talk a little bit.

17 But otherwise, I don't have anything to  
18 discuss with you.

19 How about from the Government? Anything  
20 else we need to discuss before we go into recess,  
21 Ms. Armijo?

22 MS. ARMIJO: No, Your Honor. Thank you.

23 THE COURT: How about the defendants?

24 MR. VILLA: Your Honor, just a quick  
25 question. If at some point the jury gets done for

1 the day and we come back tomorrow, let's say you ask  
2 them to come back at 8:30, do you want counsel here  
3 at 8:30 or do you want us on cell?

4 THE COURT: I certainly don't feel any  
5 need to have you all hanging around the courthouse  
6 all the time. But let's play it a little bit by  
7 ear. Let's get a little direction on what they want  
8 to do, when they want to show up, and then y'all  
9 might make a list of your cellphone numbers and make  
10 sure you give it to Ms. Standridge. Most of the  
11 time I think we probably just give you a call if we  
12 get some instruction from them.

13 But let's see what they want to do tonight  
14 before we nail down what we're going to do in the  
15 morning.

16 Anything else? Anybody?

17 All right. So when Ms. Standridge lets  
18 you go, assuming the jury doesn't want to hang  
19 around here, why don't I see you up in my chambers.  
20 And if they want to come back, maybe we'll figure  
21 out what we're going to do in the morning.

22 All right. We'll be in recess.

23 (The Court stood in recess.)

24 THE COURT: All right. All rise.

25 (Jury alternates entered the courtroom).

1 THE COURT: If the alternates would come  
2 inside and sit inside the well right behind where  
3 the Government's seats are. If you'll just line up  
4 there. I'm not going to put you in the jury box  
5 there.

6 The jury wants to go home. I'm sure you  
7 probably want to go home, too, so if you'll just  
8 remain with us and we'll talk to the jurors.

9 (The jury entered the courtroom.)

10 THE COURT: All right. Everyone be  
11 seated.

12 I understand y'all want to go home, and  
13 I've got the alternates back here, so I'm going to  
14 talk to you here together, since they're going to  
15 remain working with us.

16 Again until the trial is completed, and  
17 it's not, you're not to discuss this case with  
18 anyone, whether it's members of your family, people  
19 involved in the trial, or anyone else. And that  
20 includes your fellow jurors.

21 As to the jurors, you have been allowed to  
22 deliberate, but you got to deliberate as a body.  
23 The jury doesn't deliberate with two or three or  
24 four or something. So tonight just go home, do  
25 something else, and then when you come back in the

1 morning, Ms. Standridge is going to take roll, and  
2 when she takes roll and knows everybody is there,  
3 she'll tell you to go, and then you can begin your  
4 deliberations. But don't do that until then. Enjoy  
5 the goodies that she brings, and just relax until  
6 everybody is here and she takes roll, because we'll  
7 need to record that here in the courtroom.

8 If anyone approaches you and tries to  
9 discuss the trial with you, please let me know about  
10 it immediately. Also, you must not read or listen  
11 to any news reports of the trial, and don't get on  
12 the internet and do any research for the purpose of  
13 this case.

14 Finally, remember that if you need to  
15 speak with me, simply give a note to one of the  
16 court security officers or Ms. Standridge.  
17 Depending on how things evolve, you may hear me say  
18 these again, but you may not. But do keep them in  
19 mind throughout your deliberations.

20 I've worked you kind of late tonight.  
21 What time do you want to get together in the  
22 morning? You've got to make your first decision  
23 here. 8:30? Do y'all want to be back at 8:30?  
24 We'll be here at 8:30, then.

25 All right. The alternates, where you

1 were, Ms. Standridge, just go right back there and  
2 we'll take care of you in the morning, but you'll  
3 need to be back at 8:30 as well.

4 All right. Appreciate your hard work.  
5 Have a good evening. All rise.

6 (The jury left the courtroom.)

7 THE COURT: Mr. Mendenhall, would you take  
8 the alternates down there? I want to speak to the  
9 attorneys and the parties before we leave.

10 If you'll follow Mr. Mendenhall. He'll  
11 take you out of the courtroom and we'll see you in  
12 the jury assembly room at 8:30 in the morning.

13 All right. So why don't y'all be back at  
14 8:30 in the morning. Work with Ms. Standridge, make  
15 sure everything is okay. Leave numbers. And then  
16 when you're done with that, I'll meet you in my  
17 chambers when you're done meeting with Ms.  
18 Standridge. And then we'll meet for a little bit,  
19 and then I'll let you go and y'all can just leave  
20 numbers. All right?

21 I appreciate your hard work. Y'all have a  
22 good evening. See you at 8:30 in the morning.

23 (The Court stood in recess.)

24 (The Court stood in recess.)

25

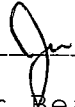
1 UNITED STATES OF AMERICA

2 STATE OF NEW MEXICO

3  
4 C-E-R-T-I-F-I-C-A-T-E

5 I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,  
6 Official Court Reporter for the State of New Mexico,  
7 do hereby certify that the foregoing pages  
8 constitute a true transcript of proceedings had  
9 before the said Court, held in the District of New  
10 Mexico, in the matter therein stated.

11 In testimony whereof, I have hereunto set my  
12 hand on this 4th day of February, 2019.

13  
14   
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